

COPYRIGHT ROYALTY TRIBUNAL

In the matter of:

COMPULSORY LICENSE FOR SECONDARY

TRANSMISSIONS BY CABLE SYSTEMS;

ROYALTY ADJUSTMENT PROCEEDING

CRT Docket No. 80-3

2100 K Street, N.W.

Room 610

Washington, D.C.

Friday, October 3, 1980

The hearing in the above-entitled matter commenced
at 10:00 a.m., pursuant to adjournment,

BEFORE:

MARY LOU BURG, Chairman

THOMAS C. BRENNAN, Commissioner

CLARENCE L. JAMES, JR., Commissioner

FRANCES GARCIA, Commissioner

ORIGINAL

Accurate Reporting Co., Inc.

(202) 726-3801

1 APPEARANCES:
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3 FRITZ ATTAWAY, Attorney-at-Law
4 Counsel for Copyright Owners

5 STUART FELDSTEIN, Attorney-at-Law
6 Counsel for NCTA
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C O N T E N T S

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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JOSEPH JAMISON COLLINS

by Mr. Feldstein	4		65	
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by Mr. Attaway		35		
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EDWARD ADDISS

by Mr. Feldstein	66		94	
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by Mr. Attaway		83		
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CHAIRMAN BURG: Do you have a witness for us this morning, Mr. Feldstein?

MR. FELDSTEIN: Yes.

Mr. Joseph Collins, please.

Whereupon,

JOSEPH COLLINS

was called as a witness and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FELDSTEIN:

Q Mr. Collins, would you please state your name, position with your company, and the experience that you have had with the Cable Television Industry?

A My name is Joseph Jamison Collins. I am the Executive Vice President for American Television and Communications Corporation. I have been with ATC since 1972. I joined the company and started with our operations in Orlando, Florida.

Since that time, I have been directly involved in the day-to-day operations of the company at either the system regional level or corporate headquarters.

Our company is a substantial operator in the cable business. We have 118 systems in 32 states. We have slightly over one million two hundred thousand subscribers at the present time.

We have substantial experience with copyrights. I think last year we filed in our systems, 7 percent of our systems, were report one, 33 percent were report two, and 60 percent were report three.

1 Q Thank you.

5

2 Thus, Mr. Collins, you have had substantial experience
3 in both the attempts to obtain rate increases and in the area
4 of franchising?

5 A That's right. Basically, my role in the company is
6 a general management role which brings me into contact with most
7 of the the operating things, in fact, all of the operating things
8 that go on with our company which includes the franchising of
9 systems. Of course the day-to-day operation, a great deal of
10 which has to do with increasing rates in the system.

11 Q Could you please give the Tribunal an overall picture.
12 We are talking about here an October, 1976, to April, 1980,
13 time period.

14 Could you give the Tribunal an overall picture of the
15 rate experience that your company has had in terms of statis-
16 tical data, in terms of how many attempts to obtain rate increases
17 and things of that nature?

18 A Well, in 1976, in April, including Manhattan which was
19 not at that time our system but was large enough that if we
20 don't include it, it tends to distort the statistics, we had 87
21 systems. The number of subscribers was 645 thousand. We had
22 244 franchises. That reflects the fact that what we call a sys-
23 tem may involve several governmental entities which range from
24 one to, I think, our largest number is, 22 separate, either
25 cities, towns or other governmental entities comprising the head
end system.

Of that number, 79 of them were regulated in one form
or another. Eight of them had no rate regulation at all. Our
average rate per subscriber was \$6.46.

In the period 1976 and 1980, we requested rate increases

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1 in 81 of those systems. The amount of the increase was approxi-
2 mately one dollar and two cents. As of April, 1980, we were
3 operating 99 systems with one million one hundred fourteen
4 thousand subscribers. Three hundred and twenty-one franchising
5 entities making up those systems. Eighty-eight of them were
6 regulated and 11 of them were not regulated.

7 Our average rate per subscriber, at that time, was \$7.27.

8 Q Thank you.

9 Does the number of requesting systems include systems
10 that requested more than one rate increase during the period?

11 A Yes, it does. There are several on the list. Several
12 on the list have had three requests or more. That just relates
13 to systems, not the total number of times that the request had
14 been made.

15 Q Now, in the attempt to get systems, you have stated
16 or state again for me please, the number of your systems that
17 are under some form of regulation?

18 A Well, as of April, 1980, it is 88.

19 Q Can you describe for us the types or the range of
20 things which you might include when you say a system is regu-
21 lated?

22 A Well, the range is pretty enormous. I think there is
23 no overriding umbrella of what relations should or should not
24 look like in this country. It really varies from a very simple
25 notification kind of procedure and maybe a negative option on
the part of the particular government to decide whether or not
they will permit it, all the way up to full and complete state
PUC rate control which is several states where cable is considered
a public utility and placed under the Public Utility Commission.

1 In between ranges everything from the same kinds of
2 proceeding that you encounter under the state level , only held
3 by the local municipal government to basic law discussions,
4 public hearing testimonies. It is really unique in each partic-
ular case. There is no overriding regulatory scheme.

5 Q Before we get into some of these regulations and, per-
6 haps, how it is worked in practice, we have heard testimony and
7 seen some evidence produced which shows---which attempts to
8 divide systems two categories--regulated and deregulated.

9 We have seen evidence that, perhaps, as much as 30
10 percent of the systems in the United States are, quote, "dereg-
11 ulated," unquote.

12 What does deregulated mean to you in the content of
that term?

13 A Well, I think as we have categorized our systems here,
14 deregulated means systems that where the company has complete
15 and total ability to set any rate he wants to in the system.
16 Where the governmental authority applies to our rates on any
17 kind of an official basis, then we have not included that as a
deregulated system.

18 One of the problems that I think that we are seeing a
19 little bit is the definition of the term "deregulation". Back
20 in the middle '70s, the industry, some of the industry publica-
21 tions, picked up the habit of reporting a number of deregulated
22 systems. That was a scorecard of where operators were going to
23 municipal governments where they have very severe rate regula-
tions and we are, somehow, attempting to change that.

24 So, some of the industry publications, if they manage
25 to get it changed, would then trumpet that system as being de-
regulated, and a lot of people put systems on the list because

1 that appeared to be a neat thing to do.

8

2 A good example of one that got publication as being
3 deregulated is San Diego, California. It is deregulated on a
4 relative basis because it used to be a fully regulated, complete
5 total rate proceeding kind of thing. The new ordinance for San
6 Diego provides for the operator having the ability to increase
7 his rates up to 60 percent of the Consumer Price Index in any
8 particular year. They cannot do it any more often than once a
year.

9 So, it is not deregulated. It is pegged at no more
10 than 60 percent of the number. It can't ride up any more than
11 that. That particular system, in fact, the franchise, covers
12 our operation in San Diego as well as the other operator. That
13 is the largest cable system in the United States. In fact, be-
14 tween the two of us, we probably represent up to 2 percent of
the cable industry.

15 Q What you have left is a provision that says you can
16 go up to 80 percent of the CPI but no more.

17 A Yes.

18 Q So, in effect, there is a regulatory barrier to a
further rate increase.

19 A Yes.

20 Another example of deregulation is the difference
21 of the total franchise number and the total systems number. If
22 you have a system composed of two franchises and one of them has
23 no rate control in the specified in the ordinance and the other
24 has almost any kind of rate control, that puts effective brake
25 on your ability to raise the total systems rates. They are
determined by the franchise that has the rate control system

1 because you can't, for the same services, be offering \$10 on 9
2 one side of the river and \$8 on the other.

3 Q Now, we have been talking here about regulated sys-
4 tems, deregulated systems and thus far, the average rate per
5 subscriber of the ATC systems. Have you made any kind of studies
6 or determinations as to how long it takes you to get a rate in-
crease?

7 A As a matter of fact, we have. We surveyed all our
8 systems during this particular period and looked at how long it
9 took them from the time that they actually applied for a rate
10 increase to the time that they were able to put that rate into
11 effect. The total time period, including all of the systems, the
12 regulated and deregulated systems, the total was 6.4 months.
13 That averages in the ones where there was none as well as where
14 there's an application and nothing was granted at all during the
period.

15 Q It took you, on an average, from the time a formal
16 application was filed until you were able to effect the rate in-
crease, a period of 6.4 months: is that what you are saying?

17 A That is correct. That is a subscriber weighed number.
18 For our average subscriber in our base, it took, from the time
19 we actually applied to whatever the granting authority was to the
20 time a rate increase was effective to the subscribers, was a
period of 6.4 months.

21 Q That's the time from when you filed the actual formal
22 rate increase; correct?

23 A Yes.

24 Q How much time was involved?

25 I presume you took some time; that the formal rate

1 increase does require a great deal of thought, preparation and
2 timing; is that correct?

3 A That's correct.

4 Q Do you know what it takes in terms of quality and of
5 time to prepare your rate application?

6 A Well, the time that it takes to get to that applica-
7 tion point from whatever time you originally decide is another
8 widely varying number based on a lot of different factors.

9 I would say, and this is not scientific but based
10 on my experience, we are talking about an average of, at least,
11 three months in doing that.

12 In many cases, there is statutory filing periods that
13 are provided for in the ordinance that says you have to do certain
14 things, approach certain bodies before you can formally file
15 the application. In almost all cases, there is a certain period
16 of consultation that goes on between the company and the municipal
17 officials involved to determine what the criteria is going to be
18 used in applying for the rate increase.

19 For instance, if we go in and ask the city manager,
20 well, we need a change in our rates, what do you think? He says,
21 well, it is really going to be important to show that you pro-
22 vided new services to go along with your rate. That means we have
23 to prepare our testimony before the city and so on in that par-
24 ticular manner. If he says, well, this is going to be a full-
25 blown rate proceeding and we want to review all your economics
and so on. That may require several months of preparation to get
the documents together in the manner the city desires. That may
well exceed the time that you actually go in and talk to the
government.

1 There is another factor involved. That is the
2 political environment factor. If you decide in August that you
3 would like a rate increase and on October 10th, there are city
4 council elections, it is usually prudent to wait before applying
5 because the council who is all out running for election usually
6 don't want to deal with an issue that affects their constituents
7 in that particular manner. If they do, many times they say, in
8 all fairness, you should wait until after the election and deal
9 with the new council because they are the ones that period will
10 affect.

11 So, all of those things kind of go together. You
12 need a period of lead time in front of the application time that
13 starts the 6.4 months clock we are dealing with.

14 Q Another factor that might enter into it; you talked
15 about coming to a city council or city manager and they say,
16 well, perhaps, you can do so, but you may have to offer a new
17 service. Can you tell us what kind of time might be involved
18 depending upon what that new service was?

19 A Well, that can be a very lengthy process. If the
20 city says we would be more than happy to grant you a rate increase
21 but we have a lot of constituents who very much would like to see
22 Christian Broadcasting Network or whether that happened to be a
23 service in effect in our satellite service in this particular
24 period and is in a lot of our markets.

25 Even if it involves ordering the modulator to put it
on the system, that could take 60 to 90 days to deliver the equip-
ment. Since that is a satellite signal and in most of the period
that we are dealing with, satellite signals requires the licensing
of your earth station. That particular licensing process took

1 anywhere from 120 days and on out longer if you had an coordina¹²
2 tion problem. So, the actual lead time there could be as much as
3 six months and, perhaps, nine if it required some unusual change
4 of the system configuration in order to bring that requested
5 service to the customer that the city feels it needs before it
6 goes to the rates.

6 CHAIRMAN BURG: Excuse me, Mr. Feldstein.

7 As a practical matter, wouldn't you anticipate at
8 any time you went before a regulatory body that they would ask
9 you for your financial records and to prove why a rate increase
10 is necessary?

10 In other words, you would have to, at that point, go
11 back and pick it all up. Aren't you aware that that is probably
12 going to happen?

13 Wouldn't you have some figures available?

13 THE WITNESS: Yes, Madam. We usually do. The problem
14 here is that is that there are a lot of different schemes under
15 which the city may choose to look at those numbers. As an example,
16 we are going to do a rate case before the Public Utilities Com-
17 mission, we know by their by-laws that they are going to want to
18 deal on a return on equity investment basis. We do it on that
19 form.

19 If we go into a small city council, we may have done
20 our numbers on that basis and they say, we are not interested in
21 that. We want to know what the return on your total investment
22 or we want to look at your last five years. We don't want a
23 test year like the Public Utility Commission does. So, we want
24 to see over the last five years and what the change is.

24 We may say, for instance, that we are basing our
25

1 request for rates on the fact that we are about to put a million
2 dollars additional into the system. So, we show them that in
3 there. They may say we don't want to here about additional
4 capital. We are basing the rates on the services that you are
5 providing today. So, we only want to look at those numbers.

6 We have had several situations where we have had
7 multiple sets of numbers on the same rate case because they change
8 exactly what they want to look for, and, unfortunately, they are
9 not always the same.

10 CHAIRMAN BURG: In effect, you can't second guess
11 them.

12 THE WITNESS: We try to get prepared as best we can
13 but we are not always sure of what they want.

14 BY MR. FELDSTEIN:

15 Q That anticipation of what a particular community
16 wants if you have a fair idea even takes time.

17 A Well, that's part of it. In other words, if we go
18 in and see the financial director of the city, we may say to the
19 finance director before we actually file, we are going to file.
20 How would you like the numbers?

21 He may say that I would like to see this or that.
22 That is part of the front-end lag time, not getting them the
23 numbers, but learning what they want so we can provide it to them.

24 Q Clarifying one point a moment ago; we talked about
25 the necessity to provide a new service. You spoke about getting
something licensed like an earth station. Were you referring to
FCC licensing at that point?

A Yes.

Q Let us talk for a moment or two about some specific

1 examples as illustrative of the problems of the rate regulations.
2 Can you tell us about the experience of the cable system in Man-
3 hattan?

4 A Well, Manhattan is really all of our New York State
5 systems. There are several levels of regulations. We have a
6 State Commission in New York State which has regulatory oversight
7 over the cable television industry in the state. It is a com-
8 mission that sits in Albany, New York, and has several sets of
9 its rules.

10 One of their executive laws is that all cable systems
11 in the State of New York have to have rates regulated by the local
12 authorities. So, in New York State, there are no deregulated
13 systems and can't be so long as that law is in effect. That is
14 really deregulated of any kind. They all require some full
15 public proceeding on the part of the local regulatory authority.

16 We operate a system in New York City in the Borough
17 of Manhattan south of 58th Street. It is a very large system,
18 and, in fact, between it and the system that operates under the
19 same franchise to the north, it represents, probably, over 1 per-
20 cent of the cable industry subscribers.

21 New York City is a very large and complicated ad-
22 ministrative animal. I have heard it said that the Mayor of New
23 York has the second hardest job in the United States. There are
24 lots of different procedures within that government to get any
25 particular contract amended. Basically what it requires in New
26 York is to change our rate is an amendment to the 20-year con-
27 tract under which we do business.

28 So, we started in 1977 to prepare how we were going
29 to do this. This requires a lot of consultation with the city

1 officials over how each particular department wants to do this.

2 In January, 1979, we actually formally filed for a
3 rate increase. What ensued was the city of New York doing ex-
4 charter specified due diligence to deal with our rate question.
5 The Comptroller Office conducted an audit. We had hearings before
6 the Board of Estimates. It was a very lengthy process.

7 Within the period that we are dealing here, the sys-
8 tem did not receive the rate increase. It was still in the pro-
9 cess of going through the process. Even after the city had taken
10 its action, the rate increase then had to go to the state. You
11 can't put it into effect. It then goes to the state.

12 The state will then review the rate increase informa-
13 tion. At the state level, because of an interpretation of a
14 New York State law, the rate increase has to be published in the
15 State Register. The publishing of that and so forth, I believe,
16 it takes, has to be on there for thirty days. It seems the timing
17 is never right. So, it takes thirty days to get it on there.
18 Then, when it comes off, schedule the next State Commission meet-
19 ing.

20 So, assuming absolutely no problem, that adds another
21 ninety days on any New York State rate increase including the
22 one in Manhattan. So, the process there was extremely long and
23 complicated.

24 Kind of a different example of that but the same kind
25 of layer of regulation problem exists in our system. For example,
26 where you have the municipalities involved creating a county com-
27 mission. If you apply for a rate increase to one of the municipi-
28 palities, they refer it to the county commission which then has
29 to refer it; which has no power. It is only advisory. So, it

1 studies it and holds hearings and then it refers it back to the
2 municipal body which then makes the decision, but you can't do
3 anything yet because it has to go back to the state of New York
4 to go through the publication process. So, it is very compli-
cated.

5 Q You have attested to the difficulties of layers of
6 regulations in a state like New York. Are there some jurisdic-
7 tions where the rate regulation is done solely by the state?

8 A Yes, there are several. Of those several, we operate
9 in two of them; Connecticut and Nevada. We operate a system in
10 Torrington, Connecticut, that went into operation in, I believe,
11 1974. Its rate has never changed. It still has the same rate
that it had in 1974.

12 The system has been very successful financially.
13 The state operates on a return on investment criteria and they
14 provide tests in cases for you to look at to see what they are.
15 Our system has always met the test which means it is ineligible
16 to have a change in its rate and has been since it was built.
17 So, it is the lowest rate in the state. We can't apply for a
18 rate increase because we already meet the state's test on a fair
return on investment.

19 Nevada is a different case. We have a very, very
20 small system in the corner of the state. The procedure there is
21 fairly cumbersome and expensive. In fact, given what a fair rate
22 of return in our opinion be judged to be, that resulting change
23 in the rate would not even begin to pay the administrative and
24 legal fees required to prosecute that case before the Nevada
25 Public Utilities Commission. So, during this period that we are
dealing with, there has been no change in the rates in that system.

1 Q As part of the deregulated system concept, a moment
2 ago, you talked about situations where a deregulated system was
3 right across the river from a regulated system which had a regu-
4 latory effect, in essence, on the deregulated system. You also
5 talked about the situation of several different kinds of regu-
6 lations in the same area.

7 Can you describe for us the situations where you
8 have a system with more than one franchising body involved?

9 A Well, I discussed that a little earlier. We have a
10 system in upstate New York which has, I believe, seven separate
11 municipal entities which comprise the system from a licensing
12 standpoint.

13 We began several years ago to attempt to change the
14 overall level of rates in the system. Some were convinced fairly
15 quickly that we had a just case and our rates were changed. We
16 still have one left which has not changed our rates and has re-
17 fused to do so. This creates a very large problem for us in
18 that we have the same rates and services provided to all of the
19 franchises. Technically, they are all coming off the same head
20 end and so on.

21 For us now to attempt to change any of the other
22 rates in the system upward, it is extremely difficult when one
23 of the pieces has refused to grant us a rate increase. It
24 basically creates a situation where one particular piece by re-
25 fusing to grant a change. It makes it difficult to make any
further changes on any of the other pieces.

 Their immediate reaction is going to be why should
we further increase our rates when our citizens are already
paying \$1.75 more than the people in this town over here. That's

1 a problem because of the way we are licensed in these communities
2 with multiple licenses.

3 COMMISSIONER JAMES: May I ask a question?

4 When you say "rate increase", are you talking about
5 the basic rate that they have control over primarily?

6 THE WITNESS: Yes, sir.

7 COMMISSIONER JAMES: If you add any other services,
8 do they control that rate, also?

9 THE WITNESS: If we add pay t.v. to it per se and
10 it is only pay t.v., they don't have control of that but if we
11 attempted to add a tier, let's say, which was a basic service
12 tier, they would have control over that.

13 BY MR. FELDSTEIN:

14 Q Before we proceed to another line of questioning,
15 would you say that you are, as a company, have experienced and
16 have continued to experience various kinds of regulatory re-
17 straints on your efforts to obtain higher, basic rates?

18 A Yes, sir.

19 Q The time lag, in particular, has a dilatorious effect
20 on the finances of the company?

21 A Well, to the extent that, unlike most businesses, we
22 are not able to adjust our rates to change with business condi-
23 tions, yes.

24 Q Let me proceed to another area of questioning.

25 The Copyright Owners, in evidence presented earlier
this week, attempted to show that the cable television industry
was beginning to or proposing to essentially give a way its basic
service or to begin to sell that on a much cheaper price; at a
much cheaper price than it has been doing. Are you familiar with

1 the new phenomenon of tiering?

2 A Yes.

3 Q You have experience in these franchise bids from your
4 own company; is that correct?

5 A Yes.

6 Q Are you, therefore, familiar also with the bids of
7 the competition?

8 A Usually, yes.

9 Q Let's talk just about your general knowledge of the
10 industry practices at the moment and then get into the specific
11 practices of ATC. To the best of your knowledge, where a first
12 tier is offered free or at a nominal charge, what services are
13 usually provided on this first tier?

14 A Well, I think we need to differeniate. So, I think
15 it will make it a little clearer. Between the existing cable
16 television industry or as it existed through this four-year
17 period and the bidding for franchises in new markets which are
18 typically the much larger remaining balance of the country, which
19 are very urban kind of environments, tiering in older systems is
20 mostly pay t.v. tiering. I don't know of anybody who has been
21 lowering the rates on their basic service.

22 Tiering in the new market is really a reflection of
23 the fact that the systems are different. The average CATV system
24 in the period we are dealing with here and, in fact, existing now
25 in the country really is a moderate to low density system built
in the small towns and cities of the country. It typically
passes one hundred homes for every mile of system that you build.
That is very different as you look at the major cities in this
country. The densities of the cities are much greater.

So, the plant configurations to build those cities

1 are different. Generally they, lately, have multiple cable 20
2 configurations which is a much higher capacity on the system
3 which can be avoided given that plant destiny. Because of the
4 capacity on that system, you can package your product in a lot of
5 different ways than you normally could do if you had a 12-channel
6 system or whatever.

7 I think the way that most of the applications for
8 new franchises have worked lately have consisted of--because you
9 have the room to do it--spreading out the product to the customer.
10 Basically, you are giving him much more of a choice to take dif-
11 ferent combinations of products.

12 Now, what that means is that usually there is a
13 lower or bottom tier. I think the industry buzz word for that
14 is universal service. Typically, universal service has no broad-
15 cast product in it at all. It is primarily community access
16 kinds of channels. If it has any broadcast products at all, it
17 is generally local off the air kind of channels normally receiv-
18 able any way by the customer.

19 Then there will be a second tier which will contain
20 and that first year may even be for free. The idea of it is
21 really a marketing idea more than it is anything else; a community
22 communications idea.

23 If you take somebody who lives, let's say, in the
24 Washington metropolitan area, they don't really understand what
25 a 24-hour news channel is. They don't really understand what a
26 24-hour day sports channel is. They do understand more broad-
27 cast television stations but they don't understand more of the
28 new kind of products that we are carrying in our systems.

29 So, we have discovered that since we are a video

1 medium, that the best way to teach people what that is and how
2 they can use it and all the products we have to sell these days
3 on this system is to let them see it.

4 So, if you have this universal level of service,
5 you get the customer connected to your plant and then you can
6 show him the rest of what you have to sell him.

7 Now, the second level he can trade up to might be
8 one that contains what was on the first level plus the broad-
9 casting product from the local market. Typically, that informa-
10 tion might have 24 channels on it. It may have some of the
11 satellite signals on it that are of an informational kind of
12 nature.

13 Q These are non-broadcast satellite signals.

14 A Yes.

15 Then you have another tier which is normally called
16 basic service because the other ones are considered a discount
17 from that; that is, the service which you expect most of the
18 customers to take. These days it can range anywhere from 36 to
19 90 some channels and will contain all the balance of the satellite
20 product. It will contain a lot of character generated products
21 and typically contains the distant broadcast channels received
22 either by satellite or microwave from another market.

23 Usually at that level the customer also can take pay
24 television. Usually, these days there are several options of
25 pay television he can take. Our experience in the new market is
that he does.

Q Thus, at least some, if not all, of the basic tiers
must then be taken before you can subscribe to pay television.

A Yes.

1 COMMISSIONER GARCIA: Is that in all cases?

2 THE WITNESS: As far as I'm aware. All of the bids
3 I have seen require taking--

4 For instance, I don't know of a bid where a universal
5 tier has a pay operation available. Sometimes on one of the
6 lower tiers, below the full basic service tier, there will be an
7 option of a family pay service which is a cut-rate sort of PG&G
8 programming product.

9 Again, with the idea that this is somebody who is
10 disadvantaged economically that there is a way that they can
11 take that. In general, the predictions in the actual experiences
12 is very, very few people take that. The basic product with the
13 horsepower is the full service pay t.v.

14 BY MR. FELDSTEIN:

15 Q Thus, in effect, are you stating that the ultimate
16 marketing aim is to have the average subscriber taking the basic
17 service or enough tiers of basic service so he is paying you for
18 basic, on a per household average, similar to what you are re-
19 ceiving in a classic market?

20 A Well, in almost all of the bids for the major cities,
21 the service level which all the applicants predict in their fi-
22 nancial proper forms and so on is going to be by far, in a way,
23 the one most people will take, that tier that has got the most
24 product on it. Typically, the rates for that range between \$7
25 and \$8, which is probably a little higher than what is in the
average 12-channel system, but there is a lot more product.

Q Now, let me ask you a question to illustrate this
relating specifically to what kind of a service, universal ser-
vice, if you will, that ATC has been bidding. Can you describe

1 that to the Tribunal?

2 A Yes. In those markets where the density of the
3 market justifies a dual cable configuration which means two
4 separate cables going into each subscriber's home. We typically
5 would provide one of those cables without a converter on it.
6 That means the customer has access to 12 channels using the
7 dial on the set. On the service, we are, generally, the access
8 channels and community communications channels for the system.
9 Perhaps one company channel which we can use to showcase our
10 products.

11 The idea of that is to basically foster the community
12 communications aspect of the system and to allow us to show the
13 customer what the product is. So, there is no broadcast. In
14 fact, there is no real entertainment product on that over and
15 above what is produced by the local community.

16 We have offered that in some communities where we
17 don't even charge an installation charge. We would like as many
18 people as possible to have that. We think once they become
19 familiar with what we are selling them, they will take more of
20 the product, of the full service product.

21 CHAIRMAN BURG: It is simply a merchandising tool;
22 gets your foot in the door with the service and upgrade.

23 THE WITNESS: It is a merchandising tool as well as
24 the more people that get connected to the system, the bigger the
25 audience we have for local programs. In other words, if that
creates a bigger audience, more local programs get produced be-
cause people have an audience. Therefore, there is more product
on that channel; more people will watch it. It is done for the
long-run economics of the system.

1 CHAIRMAN BURG: It is not like advertising, taking
2 a newspaper for an automobile agency and showing a stripped-down
3 version of an automobile at a very attractive price, getting
4 them into the showroom and trying to add options.

5 THE WITNESS: It is very different from that. There
6 are no gimmicks here.

7 CHAIRMAN BURG: I am not insinuating that there are
8 gimmicks other than the fact that you are getting them in and
9 then you are trying to add the options.

10 THE WITNESS: It is a little bit like loaning them
11 a free car for a week so that they can familiar with it and see
12 that they really like that kind of a car.

13 CHAIRMAN BURG: All right. I got your point and I
14 think you got mine. Continue, Mr. Feldstein.

15 BY MR. FELDSTEIN:

16 Q Thus, it is your hope in an ATC system of this sort
17 that, ultimately, you would be able to sell the further basic
18 tiers to the subscriber?

19 A Yes. That's our business. The primary revenue
20 generator of the system in the major markets is our basic ser-
21 vice, the full service tier, which has all of the products which
22 we hope the product will be most satisfied and keep it and pay
23 his bill every month.

24 Q Once the customer has paid for this level of service
25 and is receiving all of the distant signals which the system is
26 carrying, about how much would he be paying for his basic ser-
27 vice?

28 A Typically between \$7 and \$8 not counting second out-
29 lets.

30 Q Has the--

1 A [interposing] I might add, if I can--it is interest-
2 ing--it is sort of academic. It seems to me, dealing with the
3 copyright issue in the context of new markets, copyright gets
4 a free ride into all of those new markets. Our business is un-
5 viable in all of these new markets being bid where you are seeing,
6 where there is a kind of universal service or those kinds of
7 very large, very dense urban markets. It is not viable without
8 all of the pay television products.

9 Without that product, there is no cable system.
10 Typically, in the new markets, for every basic subscriber, he is
11 usually taking not just one but one and a half and in many cases
12 over two pay television services to go along with his basic
13 service; thereby, creating the kind of profit situation that
14 allows people to be willing to go in and spend the rather vast
15 capital dollars to wire the major cities.

16 Before HBO came in on satellite and before a lot of
17 the urban systems got help, many of them lost vast sums of
18 money. Quite frankly, they couldn't make it on broadcast product
19 alone. Even in those cities because of the fact of geography or
20 television market could bring in two or three distant signals,
21 many of them were in difficulty.

22 The thing that made the difference in the industry
23 had been pay television product. It has basically allowed these
24 kinds of markets where you need to be a little creative on how
25 you market your product to the customer. The horsepower, the
26 thing that is driving it, is pay t.v.

27 Q In other words, are you saying that some of these,
28 knowing what we now know, have learned the lessons from the early
29 '70s. Some of these major markets, despite the possibility of

1 broadcast responsibilities, broadcast signal carriage, would
2 not be built without the advent of other services such as pay.

3 A That's right. I think without, not only the revenue
4 generated by paid t.v. itself but because it is the attractive
5 part of the product, it is what causes the people to subscribe
6 to the basic service, to get the pay service. That's a lift
7 effect. That's over and above the revenues from pay that can
8 help pay for building a system in that market. That's the lift
9 effect of creating an overall attractive product that the cus-
tomer subscribes in the first place.

10 COMMISSIONER GARCIA: Do you ever see yourself drop-
ping the basic service completely and going into pay?

11 THE WITNESS: No. Absolutely not. In fact, that is
12 one of the profitable things about pay t.v.

13 First of all, pay t.v. has a margin cost. We
14 already paid the copyright owners in that situation. So, if we
15 charge the customer \$8 for pay t.v., there is a big margin on
16 that that goes back to whom he brought the product from; Show-
time or Home Box Office.

17 If we have a cable system and put on one more cable
18 television customer, there is no cost of the product associated
19 with that once we spend the capital except for the copyright fee.
20 Once we have spent the capital, then there are very few percentage
21 or per subscribers. So, incremental customers on the cable sys-
22 tem are very profitable to the system. In fact, if a customer
23 pays us \$7 a month, then it is one more customer than we already
24 had. We don't have to add a general manager or whatever. That
25 one more customer, if we charge him \$7 a month or \$7.50 a month,
\$6 a month of that is a contribution to the overall system

1 expenses.

2 If we are charging \$8 for home box office, only
3 \$4 a month of that is a contribution to the system's expenses.
4 The cable customer actually has a higher incremental value for
5 one more than the pay customer does. So, that is why it has
6 been very nice for the industry and the overall profitability
7 and its ability to look at building a major market. If you
8 look at adding that one more customer in the market, the economic
9 leverage is that you get the pay television revenue from but you
10 also get the basic revenue from many. In fact, on the per
11 customer basis, that is more valuable.

12 COMMISSIONER GARCIA: I guess what you have said is
13 you can't get a customer on basic only. The basic rate is the
14 profitability margin of the firm overall.

15 THE WITNESS: Would you repeat the question?

16 COMMISSIONER GARCIA: I think I was summarizing what
17 I thought you said.

18 Earlier you made comments that you could not get a
19 customer with only basic service. You have to have the pay t.v.
20 to be able to market the product. What I am saying overall is
21 really the basic product that is the profitable of the two.

22 THE WITNESS: There is a contribution from both sides.
23 If you look at just that one more customer, in most cases, the
24 basic part of him will contribute more to the system than the
25 pay part will.

Let me give you an example. We have a system in
Savannah, Georgia. The system has been there since the middle
'60s. We were bringing all the channels down from Charleston,
South Carolina. That was basically the product that we were

1 selling and it wasn't selling very well. The people got pretty
2 good reception on what they got. They didn't like the distant
3 signal product all that much.

4 That system had been marketed. We tried everything
5 we could think of. The saturation of the system was 28.6 percent.
6 We then added Home Box Office to the system. Within six months
7 later, the broadcast product hadn't changed. We added HBO to
8 the system and six months later it was a saturation of the system
9 of 36 percent.

10 So, we had a gigantic jump in the number of basic
11 customers in the system and that gigantic came from the attrac-
12 tiveness of the pay product pulling up the saturation of the
13 system.

14 Now, what that means is that all of those extra cus-
15 tomers who are there to buy pay t.v., they had all the chances
16 in the world to buy basic service and they didn't do it, and
17 now here comes pay t.v. Now, they are buying basic in order to
18 get the pay t.v. All that lift in the system, that's a free
19 ride by the copyright owners on basically the value of the pay
20 product from which we pay separately.

21 BY MR. FELDSTEIN:

22 Q In other words, are you saying that this is copyright
23 royalty fee revenue for retransmitted broadcast signals which
24 would not be present and collected if it weren't for the lift
25 which pay cable gives?

A That's right.

Q Thus, we actually have more subscribers to basic
because of the presence of pay and thus more copyright revenues.

A Yes, and, in fact, we are seeing another phenomenon

1 which is the attractiveness--now that pay really created the 29
2 satellite network--we now have a lot of other products that ride
3 on that delivery system and that's all. Now, some of that is
4 broadcast product but the super stations on satellite.

5 Also, up there on satellite, there are a great deal
6 of other channels that are very attractive to the subscriber.
7 There is a 24-hour a day sports channel, 24-hour a day news
8 channel, and so on. We have a system in Albany, New York,
9 which is probably, on a percentage basis, one of the heavier
10 copyright payers of the country. We were permitted to import
11 to New York two excellent New York independents and one from
12 Boston.

13 We have some other duplicate networks because of the
14 situation where the market comes together. In Albany, after the
15 main areas of it had been fully marketed, it was sitting at 39
16 percent saturation. Two months after we launched HBO, it had
17 gone up to 44 percent saturation.

18 Again, the broadcast product has not changed an inch.
19 This is simply the increment that comes from Home Box Office.
20 This January we added a whole block of additional signals to the
21 basic service. That included the 24-hour a day sports channel
22 and other programming for which copyright was paid separately
23 and the system has jumped an additional two percent of saturation
24 primarily from that product which is not pay product. It all
25 goes into basic but, again, it makes it all that much more attractive and causes the overall base of the system to go up.

Q Thus, are you paying in that situation more copyright royalty revenues even though your broadcast product has not changed but your non-broadcast product has been what has attracted people?

1 A That is correct.

2 Q To go back one more moment; included in the tiering
3 area, you have described tiering in terms of franchise applica-
4 tions, in terms of new systems. These things you would hope are
5 future trends; is that correct?

6 A Yes.

7 Q This is what will happen as the new systems are
8 built.

9 In other words, let me ask the question another
10 way. Are a whole lot of systems tiering at this present time
11 aside from the pay businesses?

12 A You are talking about existing systems.

13 Q Yes.

14 A Yes. I think what is happening is there is really
15 a big proliferation of additional product now that the customer
16 can get or that we can make available to the customer.

17 Where you have a system that has limited capacity,
18 you want--we are doing it and I'm sure a lot of the other com-
19 panies are--expansion of our system channel capacity so we can
20 order more product for the customer. In doing that, one of the
21 ways of doing that is offering it to them on an optional basis
22 through the tier.

23 Q The general kind of tiering which we have been talk-
24 ing about in terms of what the industry is planning to do and
25 what the franchise applications are showing is a recent develop-
ment and indeed has not had a great impact on the entire industry
four-year period we are involved in.

A I would say that, to my knowledge, there may be one
or two systems out of I don't know how many thousand cable systems

1 there are that have, provide, a quote "universal", unquote, 31
2 service to anybody. That is really a phenomenon of big, major
3 market kind of franchising.

4 Again, until people have been able to see the effect
5 of pay t.v. and get a belief that we can really build on that
6 economic base. Nobody was going to build the systems in the
7 major market.

8 Q In other words, are you saying any impact whatever
9 that might be on the entire cable industry will not be felt until
10 a significant number of these kinds of systems will be in opera-
11 tion?

12 A Yes.

13 MR. FELDSTEIN: I have no more questions.

14 COMMISSIONER BRENNAN: Mr. Collins, can you give us
15 a ballpark average for your system?

16 What percentage of your total operating cost are
17 provided, devoted, to copyright payments under Section 111?

18 THE WITNESS: I don't know exactly but it approxi-
19 mates 1 percent.

20 COMMISSIONER BRENNAN: What are your three major
21 operating costs?

22 THE WITNESS: That is .1 percent or a little more of
23 that of our revenues. Of our operating costs, it would approxi-
24 mate one and a half, one and three quarters percent.

25 COMMISSIONER BRENNAN: What are your three major
operating costs?

THE WITNESS: Personnel expenses would be first.
Depreciation would be first. Personnel related expenses would
be second and I would suspect that pay t.v. programming cost would
be third.

1 COMMISSIONER BRENNAN: What would be an approximate
2 percentage on personnel?

3 What percentage of the personnel cost in total
4 operating?

5 THE WITNESS: I hate to give you a number off the
6 top of my head. I would rather not give you that off the top
of my head.

7 COMMISSIONER BRENNAN: How have your personnel cost
8 increased over the last four years?

9 THE WITNESS: Overall, they have increased substan-
tially.

10 COMMISSIONER BRENNAN: Thank you, sir.

11 COMMISSIONER JAMES: Most of your franchises with
12 municipalities especially, you have to pay a percentage of
13 gross profits; is that correct, to the city or the state?

14 THE WITNESS: Yes, sir; of gross revenues.

15 COMMISSIONER JAMES: What is included in gross
revenues for that payment?

16 THE WITNESS: It varies from system to system. I
17 would say that the typical system includes everything.

18 COMMISSIONER JAMES: Even Home Box Office.

19 THE WITNESS: Yes.

20 COMMISSIONER JAMES: Is it broken down on your state-
ment of accounts to the individual cities?

21 THE WITNESS: Again, it varies depending on what
22 reports each individual city requires of us. Typically, what-
23 ever the relevant base is we report a total revenue within that
24 base. The percentage applicable and the fee being paid.

25 In some states, depending on the state and local

1 laws, that might require a full audit of the system books to
2 determine what that report and number is.

3 COMMISSIONER JAMES: Generally, if that three or
4 four percent is based on revenue, would it include all the ser-
5 vices that the system would offer?

6 THE WITNESS: I hate to generalize that. It is not
7 true in all cases. There are a lot of variations.

8 COMMISSIONER JAMES: Most of the cases.

9 THE WITNESS: I would not even say most. I would
10 say a little more than half, perhaps, are collected on the entire
11 revenue base. There is also several operations we have where
12 the percentages are different or based differently on the rates.

13 MR. FELDSTEIN: Point of information for Commissioner
14 James; the FCC used to not permit cities to collect that gross
15 revenue franchise fee on anything but the basic revenues. For
16 years, the only way a city could collect would be on the basic
17 revenue. Indeed many franchise contracts written in those days
18 still do that.

19 The FCC, within the last couple of years, changed
20 the rule so a city is allowed to impose the franchise fee on all
21 revenues. So many cities have changed their contracts and many
22 new franchises allowed all revenues.

23 COMMISSIONER JAMES: Thank you.

24 One last question; do you know of any city that re-
25 quires a breakdown of how the revenue is generated; where they
are applying that percentage?

THE WITNESS: In all cities in the state of New York,
you have to file a New York State form every year. That breaks
down all of your--

1 COMMISSIONER JAMES: [interposing] Services.

2 THE WITNESS: It breaks down by basic revenues and
3 pay t.v. revenues and so forth. That is also required by the
4 State of Connecticut.

5 CHAIRMAN BURG: You said depreciation was your highest
6 operating cost; personnel, second and pay t.v. programming,
7 third. What would your fourth be?

8 THE WITNESS: I suspect that is probably pole rental.
9 That is the least payments we make for occupying space on the
10 television pole.

11 CHAIRMAN BURG: What would the next cost be after
12 pole rental?

13 THE WITNESS: Now, we are getting off the big numbers.
14 I could not really say with any assurance.

15 CHAIRMAN BURG: I presume, within depreciation, you
16 are talking hardware cost and your engineering cost apart from
17 personnel.

18 THE WITNESS: Yes, madam. Cable is an extremely
19 capital intensive business. The typical systems we are talking
20 about today are literally hundred million dollar investments in
21 the big markets. Part of the risk in our industry that is
22 created, you go out and before you really know how you are doing,
23 you have to invest a huge amount of capital in it and operate it
24 as best you can. The big expenses basically which I did not
25 include but is there is interest; another huge expense. As you
build that capital system, you have to borrow the money to build
it. So that service or interest, I may have mislead you is
probably among those first three.

CHAIRMAN BURG: I don't know what a typical station
is so you have some latitude in your answer in this. What is the

1 extent of your personnel?

2 How many people are required to run a particular
3 system?

4 THE WITNESS: It is about a person to every five
5 hundred customers. That is an average. That can vary widely.

6 If it is a college town and twice a year all the
7 students go in and out. We may need double the people to service that in accounts. It is hard to say.

8 The average system around the country, if you
9 include everybody's system, it has half does or eighty ten people
10 in it. The bigger systems which are big business can have
11 hundreds.

12 CHAIRMAN BURG: Thank you.

13 I think we will break for a recess before we get into
14 Mr. Attaway's cross.

15 [A short recess was had.]

16 CHAIRMAN BURG: Back on the record.

17 CROSS-EXAMINATION

18 BY MR. ATTAWAY:

19 Q Mr. Collins, picking up on a question from the
20 Tribunal, you mentioned the chief elements of your operating
21 costs were depreciation, personnel, pay t.v. cost, interest
22 expense and pole rental. I believe you said that the rest were
23 "off the big numbers". May I assume copyright payments under
24 compulsory license are not a big number?

25 A No, sir. I think they asked me for the largest
components. We started with the top three and went to four.
Those were the four I knew readily identifiable. The rest of
them I am not sure of the relative ranking. I would not want to

1 rank one in the wrong place. Certainly for a copyright cost,
2 payments are not insignificant.

3 CHAIRMAN BURG: To be entirely fair, we asked by
4 operating cost. We had already asked what the copyright payments
5 were. He said one percent of revenues were approximately copy-
6 right cost and operating were approximately one and a half to
7 one and three quarters percent of revenues. Then we asked him
8 to break it down.

9 BY MR. ATTAWAY:

10 Q You said copyright payment was one percent of revenues,
11 gross revenues, and basic cable revenues.

12 A One percent of basic cable revenues.

13 Q Not gross which includes pay cable and those types
14 or revenues.

15 A No, sir.

16 Q So, copyright payments as a percent of gross revenues
17 including pay cable would be much smaller than one percent;
18 would it not?

19 A It would be a little smaller. The biggest component
20 of our revenues by far are basic service revenues.

21 Q Would it be fair to state that your copyright pay-
22 ments as a percentage of gross revenues are somewhat less than
23 one percent?

24 A I would suspect they are. Yes.

25 Q Going back to your operating cost, you mentioned
personnel. Do you have any idea what your costs, what percentage
it has increased in the last four years?

A I would not be able. I don't know what that is off
the top of my head. It has a larger percent increase item

1 because of the competition for people in the industry.

2 Q Somewhere in the neighborhood of 10 or 15 percent.

3 A In the four-year period.

4 Q Yes, sir.

5 A I would suspect it would be more than that..

6 Q Have all your operating cost, are any of them fixed
7 by statute or do they increase according to marketplace factors?

8 A Well, sir, a lot of the bigger ones are fixed by
9 other factors. As an example, once we have built a cable system
10 and it is in place, the biggest ongoing expense is depreciation.
11 That is really once the money is in there. That is fixed under
12 the accounting rules. It comes out every year according to the
13 schedule. That has a much smaller impact from inflation and
14 effects the incremental amount that affects the capital
15 over the period.

16 Similarly, depending on how a particular system is
17 financed, the interest charge may be fixed under terms of what-
18 ever. You are paying interest on the capital thing which is
19 fairly steady if it is a fixed rate interest thing, loan. It
20 would be fairly steady and not vary very much.

21 Q Do you have any cost of doing business other than the
22 copyright costs of carrying distant signals fixed by statute?

23 A Well, we have the matter of pole rentals which is a
24 considerable expense. Where the pole rental fees are now covered
25 by the federal law.

26 Q Has that tended to decrease your cost of pole rental?

27 A Not yet. It has not.

28 Q Wasn't that the intent of the statute?

29 A No, sir. I think the intent of the statute is not

1 to lower pole rentals; to create a mechanism of setting a fair
2 price for it.

3 Q You made the statement that because pay cable creates
4 some lift to your operations which generates increased subscribers
5 and increased subscriber revenues, copyright owners were getting
6 a free ride because of this. At that point, I think I heard
7 Lou Watersman scream all the way from California.

8 To the extent that pay cable does increase the sub-
9 sscribers to your system and therefore increases the number of
10 subscribers that have available to them distant signal, distant
11 signal television signals, the impact of distant signal carriage
12 of copyright owners with respect to other markets such as the
13 television syndication market is increased; is it not?

14 A I would say that that is possible not the case. The
15 customer is not going to use, he is going to buy the product to
16 use a distant broadcast channel if he thought that was something
17 of value. He would have already purchased the product to do so.

18 I think he is buying the service for the pay service.
19 Therefore, he is not predisposed to use the distant broadcasting
20 product to the extent if he had previously brought the service
21 to primarily get that.

22 Q Well, let's take a typical situation where a program
23 syndicator is syndicating a program. Let's say Happy Days,
24 television stations throughout the country. Let's take your
25 system in Savannah, Georgia, which I believe you cited as this
lift situation.

The program syndicator trying to syndicate Happy Days
to a Savannah television station. You decide to carry a distant
signal also broadcasting Happy Days. This lift you talk about

1 increased your subscribers. Doesn't that create the situation
2 where more cable subscribers in Savannah are likely to respond
3 to that program from a distant signal and, therefore, that pro-
4 gram might be worthless to the Savannah broadcast station?

5 MR. FELDSTEIN: Objection, madam chairman, on two
6 grounds.

7 One is that this witness cannot possibly have any
8 knowledge as to the impact of this distant signal carriage on
9 the product owned by the copyright owner.

10 Secondly, the impact of distant signal, if any, on
11 the copyright owner or the owner of the program is an area out-
12 side the purview of this proceeding and indeed something that
13 has been and is before the Federal Communications Commission in
14 a different context.

15 MR. ATTAWAY: Madam chairman, the witness stated the
16 copyright owners were getting a free ride as a result of this
17 lift situation. I am trying to establish that that simply is not
18 true.

19 MR. FELDSTEIN: It seems to me his questions ought
20 to be limited to the facts that were testified to in terms of
21 whether there was a free ride or not a free ride and not the
22 impact on the copyright owner.

23 MR. ATTAWAY: Let me rephrase the question.

24 CHAIRMAN BURG: All right.

25 BY MR. ATTAWAY:

Q Mr. Collins, in the Savannah situation where through
the introduction of pay cable you increased the number of sub-
scribers to your system, did you not also increase the exposure
of distant signals to television viewers in Savannah subscribers

1 to your system?

2 A Yes, but we, that exposure has potentially always
3 been there if they wanted to go ahead and buy the service and they
4 did not.

5 Q They did not. In stating that copyright owners
6 were getting a free ride from the situation, did you make any
7 attempt to analyze the costs to copyright owners as a result of
8 this greater exposure of their programs in this Savannah more?

9 A No. I am not familiar with how the whole end of the
10 business works in terms of the economics.

11 Q So, the free ride that you spoke about may have
12 another side to it that is very harmful to the copyright owners.

13 A I would not know.

14 Q Staying with Savannah for a moment, do you know what
15 the subscriber rate is in Savannah today, basic rate?

16 A It is over \$7 I believe. I don't know exactly.

17 Q Has there been a decrease in the basic subscriber
18 rate in Savannah, Georgia?

19 A No, sir.

20 Q There has not.

21 A No, sir. In fact, the rates, I believe, in this
22 period have been increased twice.

23 Q The Pay Kagan Cable Regulations Newsletter; excuse
24 me, the Pay T.V. Newsletter, the Pay T.V. Census. I got it
25 right I believe. Paul Kagan Pay T.V. Census reports a decrease
in basic service rates from \$7.75 to \$7 between 6/30/79 and
12/31/79; is that an error?

A Yes, sir, it is.

Q You mentioned that once you spend the capital to

1 build a cable system, the additional cost of serving a new sub-
2 scriber to that system, the incremental cost is very low; is
3 that correct?

4 A The incremental operating cost; yes.

5 Q So once you have got a system in operation as you
6 add subscribers to that system, you would not expect or would
7 you expect, would you not be able, to offer a decrease in the
8 subscriber rates as subscribers increase; the incremental cost
9 to each additional subscriber lowers your overall per subscriber
10 cost?

11 A Well, that's not true. Primarily because of, first
12 of all, we are talking about the contribution not profit from
13 one more subscriber. His gross revenue less his directly
14 applicable operating expenses. We are talking about one more
15 subscriber, not a thousand more subscribers.

16 Generally, that contribution goes to paying the
17 non-subscriber related overhead costs such as interest and de-
18 preciation on the main system and so forth.

19 Q Mr. Collins, it seems like you are agreeing with
20 me rather than disagreeing with me. Let me state it again.

21 If the increments cost of additional subscribers
22 is very low, then would not an increase in the number of sub-
23 scribers to a system already built enable you to charge less per
24 subscriber and make the same amount of profit?

25 A Well, sir, you are focusing on one narrow piece
rather than looking at the whole. We were using an example of
Savannah, Georgia. At the time we introduced HBO into that
system, the system was losing a great of money. That contri-
bution was not covering the interest, depreciation charge on the

1 system and all the other non-subscriber related operating ex-
2 penses.

3 So, in that particular case and in many, many, many
4 cases just like it adding another customer made the system less
5 unprofitable not creating a system where we could lower our
6 rates.

7 Q Do rate regulatory authorities take into account
8 this incremental cost factor?

9 A Well, sir, in general, they do. In other words,
10 they are saying this. They don't focus on the one more sub-
11 scriber. They are looking at the total P&L statement, balance
12 sheets of the system and saying here is the economic picture
13 of the system today. Over a year or two years or whatever the
14 relevant period is, it is changed to a new total overall picture,
15 automatically those kinds of individual things go to make up the
16 change in the economic picture.

17 Q Does not a rate regulatory body attempt to provide
18 the cable operator with what it considers a fair rate of return?

19 A Some do. You cannot make a real general statement
20 about any method of regulation. They vary quite widely. That's
21 exactly the right answer but in a great number of other ones,
22 they use some other criteria to determine it.

23 Q Isn't the ultimate objective, whatever the criteria,
24 to provide the operator a fair rate of return?

25 A No. It may be their criterion. Is that rate fair
and reasonable?

Now, you asked the question what is reasonable?

It should be based on rates of return; based on
maintaining margins.

What should it be based on?

1 It is a very complex and complicated subject that,
2 unfortunately, changes for us from one city to the other.

3 Q Let's talk about tiering for a few minutes. You
4 said that you were familiar with tiering; is that correct?

5 A Yes.

6 Q Do you ever or do you believe that tiering can be
7 used to soften the impact of rate regulation?

8 A How do you mean that?

9 Q Can you use tiering to get around the regulation of
10 basic rates by the state or local authority?

11 A It don't think so. I am still not clear what kind
12 of question you are asking.

13 Q Would you agree with the statement that if a system
14 is having trouble getting a rate increase, tiering is a way of
15 getting the rate increase many times without having to go to
16 the city council for it?

17 A No. I don't think so. I think in general it
18 probably works a little bit the other way around. If you have
19 a system that has 12 channels and the city is saying you want
20 to change your rates but we hear about all these other things,
21 how about providing them to us?

22 It may include additional broadcast channels. If
23 the company is willing to spend the capital dollars to provide
24 the converter which is usually the mechanism for tiering and
25 once you have done that, you can offer a whole broad range of
additional product; almost always that includes additional broad-
cast of distant station product.

That total package presented to the city can be very
persuasive in convincing them that the new rate structure is
correct.

1 Q Am I correct then that you are agreeing with the
2 statement that you can use tiering to achieve a rate increase?

3 A No. I believe you said it is some way to gimmick
4 around the regulatory process. It is not. It is almost a trade,
5 if you will, to get a rate increase to offer the wider variety
6 of product.

7 Q I did not mean to infer it was a gimmick. All I
8 meant to indicate was there is some incentive to tier in order
9 to achieve rate increases.

10 A There is certainly an incentive to provide a broader
11 range of product to the customer when you are increasing his
12 rates.

13 Q Then, I think you are in agreement with the state-
14 ment.

15 A No; not the original one.

16 Q Do you think most people in the cable industry would
17 subscribe to your point of view with respect to that statement?

18 A It is hard for me to say.

19 MR. FELDSTEIN: I object. There is no way this
20 witness can answer a question about what other people think
21 when he has just had the question posed to him.

22 MR. ATTAWAY: That was the statement of director
23 of corporate marketing programmer of TCI.

24 CHAIRMAN BURG: I think Mr. Feldstein's point is
25 well-taken. I will sustain that objection.

BY MR. ATTAWAY: Mr. Collins, you said your business
in many cases would not be viable without pay cable; is that
correct?

A In the big, new future market, that is correct.

1 Q Would it be viable without distant signals?

2 A It might be.

3 Q Are you aware of the information provided by NCTA
4 to the FCC with respect to its proceeding on the deregulation
5 of distant signals and syndicate exclusivity?

6 A No.

7 Q Is it your opinion then that in the major market,
8 cable systems may not carry distant signals?

9 A No. I think it is very difficult in any particular
10 situation to pick out a particular element and say that is or
11 that is not responsible for the total success of what is going
12 on. Maybe with the exception of pay t.v. which has had such
13 a tremendously pervasive impact on our business.

14 I think, as we have talked, the nature of our busi-
15 ness is high leveraged from a business standpoint. You put a
16 tremendous amount of capital into the system. There is a number
17 of people who are going to make the operation break even.

18 Incremental changes make a huge determination in
19 that range as to how profitable or unprofitable the system is.
20 A 3 percent change in subscriber could make a 10 percent change
21 in that range in the total profitability of the system. Pay
22 gets the end of the range.

23 Once you are in that range, there is a lot of things
24 that can effect it in the totality of the product that you are
25 giving to the customer that you are asking them to buy that
determine whether you are just breaking even, losing a lot of
money or making a lot of money.

We are not a business like--and I am hard pressed
to find an analogy, a dollar of sales. It costs 90 cents to

1 make a product. This is a leverage kind of business.

2 Q Are you aware of any cable system in being or planned
3 that does not carry or intend to carry distant television
4 signals?

5 A I am not aware of any.

6 Q Mr. Collins, you stated you believe, in answer to a
7 question, a free service tier when offered is a marketing tool
8 to get subscribers to take other services; is that correct?

9 A That is part of the function. Yes.

10 Q I might point out that that is entirely consistent
11 with the very points we are trying to make in this proceeding.
12 You used, as an analogy, it is like loaning a free car for a
13 week.

14 Now, if you were in the car business and loaning
15 a free car for a week, if you loan somebody else's car, wouldn't
16 you expect to pay for it?

17 A Well, except for the fact that the universal tier
18 we are talking about has no effect, broadcast signals periods.

19 Q If you did use a broadcast signal, would you be
20 loaning somebody else's car?

21 A We don't do that.

22 Q You don't but can you state unequivocally--

23 MR. FELDSTEIN: [interposing] Objection. This
24 witness knows unequivocally about his own company's system. He
25 does not know unequivocally about what other systems are doing.

CHAIRMAN BURG: Are you going to withdraw that
question, Mr. Attaway?

MR. ATTAWAY: Unequivocally.

BY MR. ATTAWAY:

1 Q Mr. Collins, are you familiar with ATC franchise
2 application in New Orleans?

3 A Not totally. I am not directly responsible for that
4 market but approximately.

5 Q To refresh your memory, this is what was reported
6 by Paul Kagan. It may or may not be accurate.

7 MR. FELDSTEIN: Is that Exhibit 10?

8 BY MR. ATTAWAY:

9 Q That indicates that you would offer 12 channels
10 free. Do you know if any of those channels would contain a
11 broadcast signal?

12 A I do not believe that there are any broadcast
13 channels among those 12. In fact, it is a similar proposal we
14 have made in other cities.

15 Again, there is no broadcast channels among those
16 12.

17 COMMISSIONER GARCIA: Give me an example. What
18 would be the thing. You talked about 24-hour news and sports.

19 What would you have in there if you don't have
20 broadcast channels?

21 THE WITNESS: That service is not designed to be an
22 antenna service. For instance, when installed in a customer's
23 home, we put one of the two cables into the system as a group
24 into the customer's home. We give them an AB switch. However,
25 they receive their broadcast signals previously.

Let's say an outdoor antenna that goes into the
"A" side and the cable goes into "B" side of the switch. They
watch television on the local broadcast channels like always.
If they want to watch the 12 channels, they push the switch.

1 On those channels are primarily community oriented
2 channels; local production. The local high school football
3 game, local people commenting on community things. It may be a
4 channel programmed by the company. It may be the city council.
5 It may have entertainment produced on it. It may have adver-
6 tisement for services; typically, in the bigger markets, if
7 there are big identifiable markets.

8 Let's say the community has a large minority popu-
9 lation which has never had a chance of having media ways in the
10 community. We use it for training.

11 CHAIRMAN BURG: On a scale of one to ten, what is
12 the appeal factor for that basic service?

13 THE WITNESS: We think very high because of the combi-
14 nation of the price of it and what it is. I think once for no
15 cost, people are going to take it. They are going to use it.
16 The more they use it, the more value it has in the community.

17 BY MR. ATTAWAY:

18 Q Mr. Collins, you testified that the rate regulation
19 in one community, when you have a system serving multiple com-
20 munities, the rate regulation in one community affects the rates
21 charged in other communities; is that correct?

22 A Yes, sir.

23 Q If such a situation would exist, would you expect
24 of a system serving multiple communities all rates to be more
25 or less the same?

26 A Except where you have the phenomenon of being half
27 way through a rate increase attempt which is the typical case.

28 Q Are you familiar with your system that serves
29 Columbus, Berkley, Westerville, and Franklin County, Ohio?

1 A Yes, sir.

2 Q Are you familiar with the rates charged by that
3 system?

4 A Reasonably.

5 Q In each of those communities?

6 A I don't know whether I could cite and quote rates
7 for each one.

8 Q Well, the statement of account filed by that system
9 that they vary from \$6.50 a month to \$7.50 a month.

10 A Yes.

11 Q Isn't that inconsistent with your statement that
12 rates are usually as a business matter kept pretty much the
13 same from one community to another?

14 A No, sir. I think that is exactly the point I am
15 talking about. The rates in Columbus, Berkley, and Westerville
16 are essentially all regulated by the local governmental authori-
17 ties. The rates in the city of Columbus were increased, I think,
18 in the fall of 1976. Applications were made to the other com-
19 munities and the rates they did not grant increases to the \$7.50
20 rate.

21 Now, that creates a problem for us in the city of
22 Columbus if we go to raise our rates. Across the way, in the
23 city of Berkley, their rates are only \$6.50.

24 Q But not so much of a problem that it prevented you
25 from charging \$7.50 in Columbus.

26 A Well, we got permission to raise our rates in
27 Columbus and we did. We did not in Berkley. The drag is to go
28 back to the city of Columbus and request an additional increase
29 in rates. It is very difficult if you have the other community
30 that is at a lower level. In fact, politically, it is

1 extremely difficult.

2 Q Maybe I misunderstood you. Mr. Collins, I thought
3 you were stating that, in fact, it was impossible to charge one
4 rate in a-- Excuse me. It was impossible to increase the rates
5 in a deregulated or unregulated community if in an adjoining
6 community the rates were kept the same by regulation.

7 A I don't know whether I used the word "impossible",
8 but you create a situation whereby it all depends on specifics.
9 The city of Columbus, in that case, compromise, probably, 80
10 percent of the total subscribers of that system complex. If it
11 had been the other way around, I think it would have been dif-
12 ficult to raise the one without having raised the other, but I
13 think the specific example I used was exactly the same as this
14 one where we raised the rates in the bulk of the systems but
15 could not raise the rates in one of the pieces and thereby pre-
16 cluded ourselves from being able to go back and apply and
17 have any possibility of success on further raising the rates on
18 the main complexes.

19 I think another interesting fact on the case you
20 were using is those rates were raised at the beginning of the
21 period, the \$7.50 and in April of 1980, we are still \$7.50.

22 Q You attribute that to the regulatory situation in
23 the other communities.

24 A In part, yes, sir.

25 Q Mr. Collins, you spoke about the delay in achieving
rate increases. The longest delay was between the time appli-
cation was filed and its effective date. You said on the average
that might be 6.4 months, an additinnal three months to prepare
application. Are any of your systems completely unregulated?

1 A Yes, sir.

2 Q I don't mean deregulated. I mean completely un-
3 regulated.

4 A Yes, sir. In fact, I gave you that number at the
5 beginning of my testimony.

6 Q I am sorry. I may have become confused in the
7 terminology. You spoke about deregulated and then said that
8 that is not always, that does not always mean unregulated be-
9 cause even deregulated systems have other factors either in
10 their initial franchise.

11 A I think I said systems that are completely unregu-
12 lated meaning there is not governmental approval required of
13 any kind or a break upon it. I think that is how I explained
14 that number. I think the number was eight.

15 Q For your unregulated systems, is there any delay
16 between the time that you determine you need a rate increase
17 and the time that that increase is put into effect?

18 A Only the notice period required. Most of them do
19 have a notice requirement where the franchise will say this.
20 The company has to file its new rates schedule 30 or 60 days
21 before they go into effect. The city has no right to say no,
22 but they do require a notice to the customer.

23 Q How long does it take to determine whether you need
24 a rate increase?

25 A Well, every year, in fact, usually more frequently
than that, we go through a planning process on every one of our
operations. We look at all aspects of it. Its financial con-
dition and so on to determine what its plan is. Part of doing
that is determining whether the rates need to be adjusted in

1 that particular market.

2 Q You do that every year generally.

3 A Usually more often than every year, even for smaller
4 systems we do that every year.

5 Q You mentioned San Diego, California. Your franchise
6 permits an increase, 60 percent of CPI. You increase your rates
every year 60 percent of CPI.

7 A That's a new operation; ours became effective March
8 of this year.

9 Q Do you intend to increase your rates 60 percent of
10 CPI each year?

11 A We did May of this year.

12 Q You believe that will continue.

13 A We will look at that again next year and determine
14 what the system needs to do.

15 - - -

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1 BY MR. ATTAWAY:

2 Q What is the primary factor in determining how
3 much you increase your rates? Is it the regulatory factor
4 or is it the marketplace factor?

5 A I don't think you can just isolate it to those two.
6 I think you look at all of the business factors that go into
7 that and make a judgement as to what you do in terms of timing
8 and an amount of requesting a rate.

9 Q Have those systems which you operate that are
10 totally unregulated increase their rates at the same pace as the
11 CPI in the last four years?

12 A I would think no, they have not.

13 Q Why would they not have increased their rates to
14 the full extent of the CPI?

15 A Well, per se, we do not run our business based on
16 the consumer price index. We base it on the overall total
17 economic condition in any particular system. Any judgement
18 of our rates against the consumer price index are after the
19 fact of that. It is not any kind of determinant of how we do
20 our business.

21 Q Is it correct that you make an individual market -
22 place decision in each situation as to what the rates in that
23 locality should be?

24 A No. We make a business decision based on all the
25 factors of that particular operation. For instance, if it is

1w-2

1 a fully regulated PUC state, market conditions are totally
2 irrelevant. We basically operate under their set of rules
3 on economics.

4 Q They are totally irrelevant, the marketplace
5 factors?'

6 A In the two cases I gave you earlier, they are
7 irrelevant because we don't get an opportunity to rate our
8 rates. Therefore, it does not matter whether it has a market
9 impact or not.

10 Q In trying to prepare for this proceeding, I looked
11 at the situation in Arlington County. I looked over their
12 rate increase proposal. Artec, in its rates increase
13 told the City Council that had its rates been tied to the
14 CPI, its rate would now be over \$13.50 per month. However,
15 Artec said the Arlington marketplace will not withstand that
16 high rate. Won't that apply to any system? Don't you have
17 to look at the marketplace and determine how much that
18 marketplace, what kind of rate it will stand in determining
19 how much to increase your rates?

20 A You used the example of Arlington. The original
21 franchise for that market was granted back in the early 70s.
22 For whatever reason, the system was not actually constructed
23 until the late 70s. I suspect because it has been true of
24 many of our markets. The driving force for making it
25 economically viable and therefore buildable was to pay TV.

1 So, I don't know what there benchmark date is or how high
2 the price index goes.

3 But, if you took it back a long time ago, that
4 would make the size of the rate increase in the rank that
5 it might create a problem. Within normal -- I say "normal" --
6 within the limit of what the CPI moves in any one year, I
7 would say basic rates are not price elastic.

8 Q They are not price elastic?

9 A No.

10 Q In terms of the market, they are not rate regula-
11 tion?

12 A If we raise 50 cents on a \$7 basic rate system,
13 we will use an amount of customers which you don't measure.
14 But, it is within a narrow rank.

15 Q Turning to some of the figures that you mentioned
16 in the earlier part of your testimony, I believe you said
17 your average, excluding New York, rate in '76 was \$6.43?

18 A If that's what I gave you.

19 Q Actually, I'm looking at a table Mr. Feldstein
20 provided me quite some time ago concerning your testimony.
21 I assume it is still correct.

22 A Yes.

23 Q It also states that excluding New York, the
24 average amount of rate increase requested from 1976 to 1980
25 was only 97 cents.

lw-4

1 A Sir, I think that was whenever we went. As I
2 said, we had a lot of situations where systems with multiple
3 applications for rate increases some of which were granted
4 perhaps not in the full amount. We would go back and ask
5 at a late date for an additional amount.

6 Q If the average was \$6.43 in '76 and the increase
7 was 97 cents, that is only a 15 percent increase.

8 A Like I said, some were requested multiple times.
9 In fact, I would suspect that well more than half of the
10 systems involved had more than a rate increase during the
11 period.

12 Q In your rate increase request, do you ever cite
13 the PCE as opposed to the CPI as the inflation index to be
14 considered?

15 A Well, sir, I suspect with a number of rate cases
16 we have done over the year, we have used almost every index
17 there is.

18 Q Have you heard of the PCE?

19 A Is that commonly known as the deflator?

20 Q It is a deflator, one of many. What does PCE
21 stand for?

22 A I don't know.

23 Q Looking at the larger view of cable operations,
24 what effect does your copyright royalty payment have on the
25 overall profitability of ATC? Is it a major factor?

1 A They make it lower.

2 Q To what extent?

3 A Compared to what?

4 Q The cost of the personnel.

5 A They have a smaller effect than the cost of the
6 personnel, but they have a substantial effect on our profits.

7 Q Has either the imposition of copyright royalties
8 upon your cable operations or the effect of rate regulations
9 made your operations unprofitable, overall?

10 A They have not made our total company unprofitable,
11 no.

12 Q Is it correct that your company is extremely
13 profitable?

14 A We make a profit, yes.

15 Q Earlier in this proceeding, we heard testimony
16 referencing a report, an industry report, released by
17 Warburg Paribus Becker in their 1979 Report. They compared
18 the fiscal 1977 with the fiscal 1978 year for American
19 Television Communications. They reported that your cash flow
20 increased 29.6 percent in that one year. Is that correct?

21 A I don't know what the exactly statistics are.
22 We did have a substantial increase in our cash flow during
23 that period.

24 Q And your net income also went up substantially?

25 A Yes, our net income has gone up every quarter

lw-6

1 during the founding of the company.

2 Q It has gone up as much as 65 percent in one year.

3 MR. FELDSTEIN: I object to entire line of
4 questioning. He is questioning ATC's ability to pay
5 copyright. Whereas, in my view, the provisions under which
6 this proceeding is taking place has to do with how much copy-
7 right should be paid to the copyright owners because of
8 inflation and the other factors which are under consideration.

9 It's not whether Mr. Collins' Company or any other
10 company can pay a particular amount.

11 COMMISSIONER BRENNAN: Can't we consider the
12 inability to pay in consideration of our decision to make
13 an adjustment?

14 MR. FELDSTEIN: We have made no statement.

15 COMMISSIONER BRENNAN: The Tribunal can consider
16 that; can we not?

17 MR. FELDSTEIN: You can't consider all factors.

18 CHAIRMAN BURG: Do you have something to say at this
19 point?

20 MR. ATTAWAY: No. I think we've made clear we
21 have a different as NCTA, as to the relevant considerations.
22 We believe if rate regulations are to be considered an
23 extenuating factor, it must, in some way, be considered along
24 with the application of cable systems to pay constant dollar
25 royalties. If the ability to pay has not been effected by

1 rate regulations, then we would argue that this Tribunal
2 ought not consider rate regulations as an extenuating factor.

3 MR. FELDSTEIN: Mr. Attaway's own case relied
4 on how much our basic rates went up, not how much we were
5 making on our basic or not making. But, how much our basic
6 rates increased.

7 Our regulatory restraint argument has to do with
8 bearing of regulations on the increase or lack thereof in
9 those basic rates. No part of this has had to do with whether
10 a particular cable system or group of cable systems have
11 raised their rates or not raised their rates because of their
12 profitability, or for that matter, in overall profitability
13 being relevant to any part of our showing.

14 Certainly, it has not been made a part of the showing
15 that Mr. Collins has testified to.

16 CHAIRMAN BURG: It strikes me that the Chair has
17 gotten a signal from our colleague that is rather clear and
18 vibrant. Under those circumstances, I will overrule your
19 objection.

20 MR. ATTAWAY: Thank you, Madam Chairman.

21 BY MR. ATTAWAY:

22 Q In that case--

23 CHAIRMAN BURG: Thank Commissioner Brennan.

24 MR. ATTAWAY: Thank you, Commissioner Brennan.

25 BY MR. ATTAWAY:

1 Q Mr. Collins, I would like to ask you point blank
2 has rate regulations effected the payment of American
3 television and communications to pay copyright royalties
4 which, I believe, you stated earlier would be somewhat less
5 than one percent of our gross revenues?

6 A In terms of -- I'm a little unclear in terms of
7 just being able to pay without going bankrupt. If you are
8 saying that, no. We are not going to go bankrupt paying
9 copyright. I might point out, all the profits, in fact,
10 all of our cash flow, since we started our company, is reinvested
11 in cable television business, plus an amount of money that we
12 borrow.

13 So, to the extent that we pay copyrights,
14 that's funds that we do not have available to expand our
15 business. But, if you are asking would we be drastically
16 damaged by paying copyright, the answer is no.

17 Q You put all of your profits back into the building
18 of systems? You contribute nothing to Time, Incorporated?

19 A Well, first of all, only in the latter part of
20 the period have we been a part of Time, Inc. No, we are not
21 a cash machine for Time, Incorporated. We are a growing
22 subsidiary of the company that uses more cash than it throws
23 off.

24 Q The annual report for Time, Incorporated, 1979,
25 states that the video groups' big profit increase resulted from

lw-9

1 partly the acquisition of ATC which had record profits
2 in 1979. Is that incorrect?

3 A No, sir. We had record profits in '79. We took
4 the profit and reinvested them into the cable television
5 business.

6 Q Have you made an attempt to analyze the rates
7 paid by your unregulated system, the rate charged by your
8 unregulated systems and those charged by your regulated
9 systems to determine the difference?

10 A Well, the non-regulated systems are a very small
11 part of the total of the company. We don't break it down
12 that way. I think as we talked about earlier where we have
13 a bigger system that is comprised of smaller systems, yes.
14 That is very graphic because you are dealing with one
15 operation with different rates.

16 Q I'm looking for an average number. We reviewed
17 a questionnaire sent out by this Tribunal. The result of
18 that questionnaire was that it was an occasion that the sub-
19 scriber rate charged by unregulated systems was very close to
20 the rate charged by regulated systems. I was just wondering
21 if this situation was manifest in our own operations as well.

22 A I don't know exactly what the statistics are.
23 As I say, individual system situations where we have a
24 regulated piece and an unregulated piece. I have testified
25 to several examples and in fact you had one. Basically,

1 there was a gap there.

2 Q Excuse me. In seeking a rate increase, did you
3 ever, in addition or instead of a rate increase, ask for
4 deregulation?

5 A Yes, we have done that.

6 Q With specific reference to Birmingham, Alabama,
7 did you do it there?

8 A I believe we did, yes.

9 Q Charlotte, North Carolina?

10 A I believe we did, yes.

11 Q Raleigh, North Carolina?

12 A I think you are confusing a couple of things.

13 In many cases, even though we would not normally request a
14 rate increase, we have gone to cities to request
15 ordinance changes in the basic underlying ordinance document.
16 Many times, that particular change is to ask that the rate
17 regulations of the provisions be softened. One of the problems
18 we had as an industry for a while was FCC back in '72,
19 when the rules came out, set standards for what they thought
20 was a proper ordinance to operate under. One of the
21 standards contained in the FCC Code was a requirement that
22 all entities that issued cable franchise, whether they were
23 little counties or great, big cities, had to have government
24 required direct approval of all changes in rates. Those
25 had to be done as a part of full public proceedings. That

LW-11

1 caused big problems. They did not know how to interpret
2 those rules.

3 Many cable operators were diligent. If you did
4 all of that by '77, it was going to be Armageddon. They went
5 out and went to cities and asked for change. Nobody knew
6 what was required. There were very elaborate rate increases
7 procedures in the code of many cities.

8 After 1977, it was '77 or '78 when FCC deregulated
9 that particular portion of the law, we went back to a lot
10 of franchises and said let's change what the rate regulation
11 proceedings are --in many of the industry documents that
12 showed up as asking for deregulation or whatever. In many
13 cases, that was not in lieu of a specific request for an
14 increase in rates.

15 Q I'm aware of the FCC situation. But, my point is
16 that or the question I would like to ask is this: when you
17 computed the average delay between the time an application
18 was filed and the application for a rate increase was filed
19 and the effective date of the rate increase, did you include
20 situations where in addition to a rate increase, you were also
21 asking for deregulation?

22 A I don't believe that where we just asked for a
23 change in the ordinance, that was included, no.

24 Q So, the delay in achieving an ordinance change,
25 along with your rate increase was not considered--

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A Not where it was simply a request for deregulation.

In many cases, we filed for both at the same time we said we would like a dollar increase in our rates. From then on in, we would like to have slack off the regulatory process so we can avoid further regulatory delays.

Q That is exactly the point I was trying to make. In arriving at that 6.3 months figure, you included requests for something other than a rate increase which may affect on your survey of lengthening the period?

A I don't know how to get to it statistically but I would say that is a very, very small amount of that number.

Q But it is in there someplace whatever the magnitude of the number is?

A There may be a very small piece of it.

MR. ATTAWAY: That is all I have.

CHAIRMAN BURG: The Tribunal has sat through a lot of hearing days during this calendar year. Mr. Attaway, you will be happy to know yours was not the first 63-minute half-hour cross-examination.

We will adjourn until 2 o'clock this afternoon.

(Whereupon, a recess was taken

until 2 o'clock p.m.)

etp2

A F T E R N O O N S E S S I O N

CHAIRMAN BURG: All right. Let's see. We are ready to proceed with Mr. Feldstein redirect, Mr. Collins. Let me remind you in case you have forgotten, this is a Friday afternoon.

REDIRECT EXAMINATION

BY MR. FELDSTEIN:

Q Mr. Collins, just a couple of questions.

Note from your earlier testimony that the size of your company in terms of subscribers has approximately '76 to '80 time period. A point was raised that your personal costs have gone way up. Is a major reason for this you have had to hire more people because of this expansion?

A Yes.

Q Mr. Attaway asked whether there were any other costs which were in any way fixed by law other than the copyright royalties. Are your income taxes fixed by law?

A Yes.

Q Are your state taxes fixed by law?

A Yes.

Q Are your franchise fees fixed by law?

A Yes.

MR. FELDSTEIN: No other questions.

CHAIRMAN BURG: Thank you very much. Any questions of Mr. Collins?

etp3

1 That was very brief on your part, Mr. Feldstein.

2 Thank you very much.

3 Thank you, Mr. Collins.

4 (Witness excused.)

5 CHAIRMAN BURG: Who is your next witness?

6 MR. FELDSTEIN: My next witness is Mr. Ed

7 Addiss.

8 Whereupon,

9 EDWARD ADDISS

10 was called as a witness and, having been previously duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FELDSTEIN:

14 Q Mr. Addiss, will you please state for the record
15 your full name and your title and your company?

16 A I am Vice President of Development for Warner
17 Amex Cable Communications, Incorporated. I joined what was
18 then Warner Corporation in 1976. I had overall responsibility
19 for the company's rate program and copyright and franchise
20 renewals during the period October 1976 to April 1980.
21 Warner Amex Cable Communications, Incorporated is one of
22 legal armour in cable systems today serving more than
23 700,000 subscribers in 29 states.

24 As of April 1980, Warner Amex operated 130 systems
25 in 340 different franchise areas.

1 Q Can you please tell us the spread of those systems
2 in terms of the size, in terms of forms in the copyright,
3 statement of account forms?

4 A Yes. In general, these systems are rural a
5 major metropolitan areas with markets ranging from 250 to
6 more than 42,000 subscribers. For the reporting period ending
7 June 30, 1978, 26 percent of Warner Amex's systems filed
8 form one of the copyright statements of account. Thirty-nine
9 percent filed form 2 and 35 percent filed form 3.

10 By comparison for the period ending June 30, 1980,
11 19 percent filed form 1 down from 26 percent. Forty-three
12 filed form 2. That is up from 35 percent and 38 percent
13 filed form 3.

14 Q Mr. Addiss, could you for this Tribunal give us
15 a general picture as Mr. Collins did this morning of the rate
16 increase effort of Warner Cable during the 41-month
17 period in question?

18 A Subscriber service rates for the period that you
19 have asked me for increased by 11.1 percent.

20 Q Can we say that your result is 11 percent from
21 October '76 to April 1, 1980?

22 A October 19. Yes.

23 Q Can you tell us some of the figures in terms of
24 the regulated and unregulated systems in terms of the number
25 increases that you were able to obtain, the number of

etp5

1 increases that you were able to obtain, the number of increases
2 that you were not able to obtain and some data in this nature?

3 A Warner Amex achieved 426 rate increases during
4 the period October 1976 through April 1, 1980. In the
5 340 franchises I operate, 138 franchises granted one increase
6 and 119 franchises granted more than one.

7 There were no increases in 83 franchises for
8 various economic and political reasons.

9 Q In the franchises which did not grant increases,
10 could you relate to the Tribunal why the increases were not
11 granted in this area?

12 A A variety of reasons. Where we had cable rates
13 regulated, there were a number of systems where we were not
14 able to obtain a rate increase. In a group of systems in
15 the Northeast, for example, where cable is regulated like
16 a public utility, we had a number of systems where we were
17 not able to obtain a rate increase because it was determined
18 that the return on net investment was sufficient under the
19 regulatory rules of that particular state.

20 Q Your --

21 A Excuse me.

22 That also occurred in several systems where they
23 used the same type of regulatory control, where they considered
24 the rate to be sufficient on net investment.

25 Q Thus, the method of rate regulation in these

1 systems was the reason why a rate increase could not be ob-
2 tained?

3 A That is correct.

4 Q In some of these where there were no rate increases,
5 was it because the system or the franchise was too new to
6 go in and ask for a rate increase?

7 A Yes. That is true where we were granted a fran-
8 chise late during this period of time obviously we could
9 not go back in for a rate increase. That is while we were
10 building the system.

11 Q Now, I know that there are many reasons why, as
12 we have heard related to us by Mr. Collins this morning, there
13 are either delays in obtaining a rate increase or there are
14 reasons why a rate increase cannot be requested or there are
15 reasons why a rate increase may be denied.

16 I think it would be helpful to this Tribunal if
17 you could in a number of these categories if you would
18 provide some flesh and blood examples of this nature.

19 A I just mentioned one where cable rates are regu-
20 lated either by state or the community on a net investment
21 basis. There are a number of other reasons why. For instance,
22 in the city in the Midatlantic, there were federal restrictions
23 on the chance that could be carried by that system.

24 That is the FCC had restrictions as to which channels
25 could or could not be carried. Whereas nearby systems because

etp7

1 they were grandfathered the rules were allowed to carry
2 additional signals.

3 Our system could not. We were unable to get a
4 rate increase because of the signal carrying restrictions
5 in that community. Service rates in nearby systems are often
6 lower than our creating political problems that hamper rate
7 increases.

8 Cable systems that serve several communities
9 required a concensus before rates could be raised. I believe
10 the previous witness has testified to that. Cable systems are
11 delayed frequently by local authorities for a variety of reasons.

12 That is also been testified to. That could be
13 because there is a local municipal election coming up. A
14 local council does not wish to pass on a rate increase
15 request until the new council has had an opportunity to
16 review it.

17 The amount of the increase granted is sometimes
18 less than the amount requested. In a small town in
19 Pennsylvania we requested a dollar rate increase and were
20 granted 50 cents, for instance. After bargaining with them
21 for many months.

22 Franchise renewals frequently resulted in delaying
23 a rate increase. We were coming up from a franchise renewal,
24 it is not political to go in and ask the town for a rate
25 increase at that time.

etp8

1 Efforts to deregulate rates have long-term
2 benefits but sometimes means foregoing a rate increase for
3 a period of time.

4 Finally, in some communities rate increases
5 were limited to a percentage of the increase of the consumer
6 price index or a similar index.

7 Q That later category, these rate increases that
8 are limited to a percentage of an inflation index, are these
9 what is generally thought of in the trade press as a so-called
10 deregulated system?

11 A Yes.

12 Q In other words, there, a couple of these systems
13 I would presume such as nearby community rates and percentage
14 average of inflation limits are situations which would be
15 called by some as a deregulated?

16 A Yes.

17 Q Is it fair to say, therefore, that a cold percentage
18 figure of deregulated systems does not reflect the full
19 extent of your regulatory problems?

20 A Yes.

21 Q Do you experience delay when you seek a rate
22 increase?

23 A Yes. We have had delays that have ranged from one
24 month to as much as 21 months. Our average is approximately
25 four months. For many reasons as stated previously.

etp9

1 Q Do you also have the same corporate type of
2 mechanism where you are examining the situation in a
3 community and timing your rate request to be at the most
4 propitious time?

5 A Yes. In general, we have a rate program that is
6 an ongoing program. It is reviewed constantly. We have an
7 annual budget whereby we look at each individual system and
8 look at the rate increase required for that system and set
9 both time and amounts as to what we will seek in that particular
10 system.

11 Q The four months that you testified to, by that
12 do you mean the time elapsed from formal request to effectuation?
13

14 A That is correct.

15 Actually, the timing, of course, is much more
16 because there are many instances we don't go for a rate
17 increase for several months. We don't even bother to
18 apply because of various political situations.

19 Q Finally, is it your opinion as far as Warner
20 Amex is concerned that the presence of regulation has had
21 a significant restraining effect on the rates that you are
22 able to charge companywide?

23 A Absolutely.

24 CHAIRMAN BURG: Excuse me, Mr. Addiss, if you
25 did not have these regulatory constraints, I can understand

etpl0

1 that you might be able to effect the rate increase faster.
2 But in terms of how much that rate increase would be or in
3 terms of how many times you asked for it, what would your
4 guess be?

5 How much higher would your rate be today absent of
6 regulatory constraints than they are?

7 A THE WITNESS: I've not calculated, undoubtedly, it
8 would be higher. Our rates would be higher.

9 CHAIRMAN BURG: By the same token, would you ask
10 for rate increases more often perhaps?

11 A THE WITNESS: Not necessarily more often but on a
12 regulatorized basis. I would get them on a regulatory basis.
13 In other words, we might ask them on a regulatory basis. We
14 may be constrained to get them every eight months or something
15 like that.

16 CHAIRMAN BURG: Generally, what would the
17 average of subscriber rates be? It does not have to be
18 precise. Just within certain parameters?

19 THE WITNESS: I think I can give you the precise
20 number. In October 1976, our average rate for basic service
21 was \$7.25. Per month. In April 1980, the average rate
22 was \$8.04.

23 CHAIRMAN BURG: Let me pose a hypothetical to
24 you. Without those regulatory constraints, what do you think
25 the average might be?

etpl1

1 THE WITNESS: I really don't know, Commissioner.
2 It would be higher. But I could not give you a dollar figure.

3 CHAIRMAN BURG: A dollar higher? Two dollars
4 higher? Three dollars higher?

5 THE WITNESS: Ten to fifteen percent higher would
6 be my guess.

7 CHAIRMAN BURG: Thank you.

8 MR. ATTAWAY: Excuse me. Would you repeat the
9 '76 and '80 rates?

10 CHAIRMAN BURG: \$7.25 and \$8.04.

11 MR. ATTAWAY: \$7.25 in '76 and \$8.04 in '80.

12 Excuse me for interrupting.

13 BY MR. FELDSTEIN:

14 Q Mr. Addiss, let me ask you a few questions on
15 the issue of tiering.

16 In your franchise proposals which are outstanding
17 at this point, are you proposing tiered systems?

18 A Yes.

19 Q Are you proposing any tier which is free?

20 A No. We have no universal service in any of our
21 franchise applications or free service.

22 Q Are you proposing tiers which are relative to the
23 industry average for basic service at a lower rate?

24 A First tiers which are at a lower rate?

25 Q First tiers which are in the \$2, \$3, \$4 range.

1 A Yes.

etpl2 2 Q Can you tell us what service you are providing
3 or proposing to provide on those low priced tiers.

4 A The service will be local or must carry signals.
5 Plus public access, local origination, those type of non-
6 broadcast signals.

7 Q Will you place your distant signals on the next
8 tiers?

9 A That is correct.

10 Q Approximately what are the prices of those next
11 tiers when a person tax expanded basis?

12 A \$7 to \$8.

13 Q In the marketing projections which your company
14 has made, do you expect most subscribers to take those
15 expanded tiers?

16 A Yes.

17 Q Approxiamtely to what extent?

18 A Eighty to ninety percent.

19 Q Must a subscriber take that expanded basic in order
20 to be able to buy the pay cable services?

21 A Yes.

22 Q Another area, Mr. Addiss, is that a copyright
23 owners have made an argument at various times, both on direct
24 and on cross, that the cable television industry is quite
25 profitable. Although NCTA does not concede the relevance of

etpl3

1 that consideration to this proceeding, I thought it might be
2 profitable to ask you to tell us about the Warner profits in
3 the years in question in this proceeding.

4 A Warner Cable Corporation according to the 1979
5 Warner Communications Annual Report showed pre-tax. Pre-tax
6 income in 1976 of 19.1 million. Pre-tax income 4.3 million
7 in '77. Pre-tax income in '78 1.8 million. Pre-tax income
8 in '79, 4.4 million.

9 COMMISSIONER GARCIA: Did you say '79 it dropped
10 a couple of million both years?

11 THE WITNESS: I can't hear you.

12 COMMISSIONER GARCIA: '78.

13 THE WITNESS: '78 was 1.8.

14 COMMISSIONER GARCIA: '79, 4.something.

15 THE WITNESS: 4.4.

16 COMMISSIONER GARCIA: '77?

17 THE WITNESS: 4.3.

18 COMMISSIONER GARCIA: What is extraordinary about
19 '78?

20 THE WITNESS: Development of the cube system in
21 Columbus, Ohio. I might add in the same annual report on the
22 same page talking about potential profits for 1980, statement
23 1980 earnings will be well below 1979. However, these expenses
24 are the foundation for substantial future growth. The filmed
25 entertainment division break this up theatrical and television.

1 Take it combined. 1976 --

etpl4

2 MR. ATTAWAY: Excuse me. I have to object.

3 CHAIRMAN BURG: Mr. Addiss. I am going to sustain
4 that objection, but I have a question with respect to your
5 1978. Is the cube system the two-way communication?

6 THE WITNESS: That is correct.

7 CHAIRMAN BURG: Is that the only city in the
8 country that it is in place in now?

9 THE WITNESS: The only major market that has two-
10 way cable operating now.

11 CHAIRMAN BURG: Has that been a success?

12 THE WITNESS: It has been a success. It is an
13 experiment for us. It has been a success in that it has
14 opened up a whole new area for different types of services
15 which we hope to market in the future which we will put into
16 other major metropolitan systems.

17 CHAIRMAN BURG: Thank you.

18 BY MR. FELDSTEIN:

19 Q Mr. Addiss, have you bid and been awarded fran-
20 chises for other systems which utilize the cube technology?

21 A Yes.

22 Q Where are they?

23 A Pittsburgh, Cincinnati suburbs, Houston, part of
24 Houston, I should say.

25 Q We have seen a general flattening of the profits

1 of the cable portion of Warner.

etpl15

2 Q Is this because of the large capital investment
3 which needs to be made in your large city systems?

4 A Yes. That is correct.

5 Q Is that because the profitability of those large
6 city systems is far down the road?

7 A That is correct.

8 Q Indeed --

9 A We any other major cable entity going into a
10 large new metropolitan market expect to show lows over the
11 first several years.

12 Q Indeed the ultimate profitability of such systems
13 may still be in question?

14 A That is correct.

15 Q Mr. Addiss, you have testified to the profitability
16 of the cable end of Warner Communications. How does that
17 profitability compare with the profitability portion of Warner
18 Communications?

19 MR. ATTAWAY: Madam Chairman, I object. It is
20 irrelevant.

21 MR. FELDSTEIN: Madam Chairman, testimony has been
22 permitted repeatedly in this proceeding as to the profitability
23 of cable television in terms of its ability to pay. Since
24 we are talking in this proceeding about monies, copyright
25 royalties to be going to the copyright owners, it would seem

etpl6

1 to me it would be relevant to know their need for extra
2 compensation.

3 MR. ATTAWAY: Madam Chairman, if counsel insists
4 on this line of questioning, he is going to have to lay some
5 kind of foundation to legislative history and purpose of
6 their account to establish that the profitability of program-
7 ming producers is to be considered as an extenuating factor
8 in this proceeding.

9 MR. FELDSTEIN: We believe that the profitability
10 of both industries is irrelevant. Certainly, Mr. Attaway
11 laid no foundation before he introduced the profitability
12 of cable television through Mr. Valenti over our objections.

13 CHAIRMAN BURG: Mr. Attaway, the Chair is going
14 to set aside its previous judgment on this and overrule your
15 objection and ask Mr. Feldstein to proceed.

16 MR. FELDSTEIN: Thank you.

17 BY MR. FELDSTEIN:

18 Q Mr. Addiss, referring to the reports in front of
19 you, can you tell us what the profitability of the theatrical
20 end of Warner Communications was in the years in question?

21 A '76 filmed entertainment revenues \$285 million
22 operating income 42.2 million. 1977, the revenues were 353.2
23 million and operating income of 58 million, 1978 revenues of
24 393 million and operating income of 79.9 million. In 1979,
25

etpl7

1 revenues of 600.7 million and operating income of 117.6
2 million.

3 Q Thus, in those years as he recollects the figures
4 you just stated it went from 42 million to 116 million in
5 operating expenses?

6 A 117.

7 Q In a straight trend line upward?

8 A Correct.

9 Q While in the same years the Warner Cable operating
10 income vacillated between 4 million?

11 A Pre-tax. They don't give the pre-tax number for
12 film. I will give you the operating income for Warner Cable.
13 '76, 12.6 million. Operating income in '77, 9.2 million.
14 Operating income of '78 was 7.5 million. And operating
15 income in 1979 was 12.2 million. In '76, 12.6 million, '79,
16 operatng income of 12.2.

17 Q Relative to the two industries involved what posi-
18 tion is Warner Cable in in terms of company size of cable
19 companies?

20 A I believe we are Number 5 or Number 6.

21 Q What position is Warner in, the same question, in
22 the theatrical?

23 A We are Number 1, Number 2.

24 Q The last area of questioning. Considerable amount
25 of testimony has taken place on what NCTA considers to be the

etpl8

1 most relevant consideration. That is the royalty fee per
2 subscriber increase. Have you calculated your RFP?

3 A Yes.

4 Q What was your first calculation?

5 A The first calculation was for the first report
6 period in 1978.

7 Q The last?

8 A That was the six month period ending June 30, 1980.

9 Q Can you tell us the report?

10 A Copyright fees per subscriber for that period of
11 time for the six months filing period increased from 55.9
12 cents to 67.2 cents or an increase of 20.2 percent.

13 Q Those 55 cents figures et cetera are six months
14 figures; is that correct?

15 A That is correct.

16 Q You double them to analyze that?

17 A Actually, they went up but you could double them
18 to analyze them. They went up in each filing period.

19 Q That was 20.2 percent increase?

20 A That is correct during those two years.

21 Q To what do you attribute that increase?

22 A Attribute it to several reasons. First of all
23 rate increase. Second of all additional signals added to
24 existing systems. Additional television signals. Distant
25 signals. Thirdly, the change in the filing of form 1, Form 3,

1 and form 2. As our systems grow, a low went from form 1 to
2 2 and from form 2 to form 3.

3 MR. FELDSTEIN: I have no more questions.

4 COMMISSIONER BRENNAN: I have one or two.

5 Mr. Addiss, Mr. Coles testified this morning that
6 for his company the payment made for copyright fees is
7 approximately one and a half percent of their operating
8 cost. Would it be a similar number for your Warner
9 operation?

10 THE WITNESS: Approximately, yes.

11 COMMISSIONER BRENNAN: Thank you.

12 CHAIRMAN BURG: Mr. Addiss, I asked Mr. Coles this
13 morning how much appeal those basic, the universal or basic
14 tier service has. I asked him to describe it on a basis
15 or scale of one to ten. He did not precisely do that. But
16 he said it was substantial.

17 What would your view be on that?

18 THE WITNESS: Madam Chairman, we don't have a
19 universal or free service offering.

20 CHAIRMAN BURG: Your basic service without broad-
21 cast signals?

22 THE WITNESS: We don't have a basic service without
23 broadcast. The basic service including the logical broadcast
24 service. So we pay copyright on that basic service.

25 CHAIRMAN BURG: All right.

etp20 ,

1 Mr. Attaway.

2 MR. ATTAWAY: Thank you.

3 CROSS-EXAMINATION

4 BY MR. ATTAWAY:

5 Q Having received a very clear and very unequivocal
6 expression from the Chair, I intend to be very brief.

7 CHAIRMAN BURG: It is my prerogative to change
8 my mind.

9 BY MR. ATTAWAY:

10 Q I think you testified Warner was Number 1 in
11 theatrical production; is that correct?

12 A I don't know. I said Number 1 or Number 2. I
13 don't know the answer to that, sir.

14 Q I think the record should be made clear that you
15 don't know the answer to that. You testified that 35 percent
16 of your systems field form 3 statements of account in
17 1976 and 36 percent of your systems filed a form 3 statement
18 of account in 1980.

19 May I assume that you are fairly familiar with
20 statements of account filed by Warner Amex systems?

21 A I am familiar with the form.

22 Q Are you familiar with the forms filed by Warner
23 Amex system?

24 A I am familiar with the form filed by Warner
25 Amex systems.

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A Yes.

Q Mr. Addiss, yesterday there was some considerable discussion as to whether cable systems reported commercial subscribers or their statements of account having testified that you were familiar with these statements of account perhaps you can shed light on the issue. Do Warner Amex systems serve commercial customers?

A Yes.

Q Are they reported on the the statement of account filed by Warner Amex?

A Yes.

Q They are?

A Yes.

MR. ATTAWAY: May I show you the statement of account filed by Warner Amex for the 1979 period. I would like you to show me one statement of account that refers to a commercial subscriber.

CHAIRMAN BURG: Are you going to make this easier for us, Mr. Attaway?

MR. ATTAWAY: There aren't any.

CHAIRMAN BURG: This was not in the interest of time.

MR. FELDSTEIN: May we have a recess since we have not seen these. Those to look at them.

CHAIRMAN BURG: Sure.

1 (A brief recess was taken.)

2 CHAIRMAN BURG: Mr. Attaway.

3 BY MR. ATTAWAY:

4 Q To continue with this line of questioning, as I
5 said before, the difficulty of determining the copyright
6 payment per subscriber from the statements of account was
7 discussed yesterday. I believe you testified today that
8 you determined that Warner Amex systems in 1978 would have
9 or did pay 44.9 cents per subscriber and 1979 to 67.2 cents
10 per subscriber.

11 How did you determine this per subscriber royalty
12 payment? You could not have used your statement of account
13 because we don't know how many subscribers you had.

14 A No. We did not use our statement of account. What
15 we did was to calculate the total copyright fee paid for that
16 period of time and divided by the averaged subscribers
17 during the period.

18 Q Total subscribers?

19 A Average total basic subscribers during the period.

20 Q Commercial as well as residential?

21 A That is correct.

22 Q How did you calculate your commercial subscribers?

23 A On a basis that take the total revenues for any
24 given month divided by the average rate and come up with the
25 equivalent subscriber.

1 Q Could this determination have been made from
2 your statement of account?

3 A I don't know. Mr. Attaway, you have given me
4 various statements of account filed by copies filed by
5 Warner for 1979?

6 Q Yes, sir.

7 A Are these the totalsthat you have?

8 Q I understand that they are every form 3 statement.

9 A It looks to me like there are 40 or 45 statements
10 of account. Actually we filed about 130 forms with the copy-
11 right office for that period. These statements were made
12 under my supervision but I did not fill them out. They were
13 filled out by another group.

14 Q In your determination of per subscriber royalty
15 fee paid, you used additional information than what NCTA
16 used in their calcuation?

17 A I don't know.

18 Q You did not use the statement of account?

19 A That is correct.

20 You mean these figures, this 55.9 versus
21 67.2?

22 Q Yes.

23 A That is correct.

24 Q Mr. Addiss, you have testified that in 1977-78,
25 the net income for Warner Amex decreased. This was because

etp24

1 of the heavy investment in cube; is that correct?

2 A No. Tht is not correct.

3 Q Would you correct, please?

4 A I said the pre-tax income decreased from 4.3
5 million to 1.8.

6 Q What happened to your cash flow during that
7 period?

8 A Cash flow went down.

9 Q How much?

10 A \$300,000.

11 Q Are you familiar with a publication entitled
12 Industry Financial Service, published by Warburg Paribus
13 Becker?

14 A Generally, familiar with it. Yes.

15 Q Are you aware that for that period Warburg Parisbus
16 Becker reports that cash for Warner Cable increased 11.5
17 percent.

18 A No. I am reading to you from our annual report.

19 Q There seems to be some discrepancy.

20 COMMISSIONER GARCIA: Is your report consolidated?

21 THE WITNESS: Yes. But this is broken out. This
22 is the cable division broken out. They report certain
23 figures on the cable division. I prefer our annual report.

24 BY MR. ATTAWAY:

25 Q You testified that with respect to theatrical

etp25

1 production, was it pre-tax net income or just net income in-
2 creased between 1976 and 1980 in each year?

3 A Neither.

4 Q What did you say increased?

5 A Operating income.

6 Q You will have to excuse me because there was not
7 any advance written testimony. I have to take notes and
8 my notes sometimes are not too good. Operating income.

9 Do you know what the increase, if any, in the
10 percentage of operating income -- let me rephrase the
11 question.

12 During this period, was there any increase in the
13 percentage of operating income over gross revenues?

14 A You mean in terms of margins?

15 Q Yes.

16 A I don't know. I have the figures here. If I can
17 borrow your calculation, I could probably give you the answer.

18 MR. ATTAWAY: As a percentage of the total revenues
19 operating income in '76 was 14.8 percent. In 1977, it was
20 16.4 percent. I am talking about the filmed entertainment
21 of Warner Communications income?

22 A In '78, it was 20.3 percent. In '79, it was
23 19.3 percent. In answer to your question, yes, it did go
24 up during that period as a percentage of revenues.

25 BY MR. ATTAWAY:

etp26

1 Q In this case, Mr. Addiss, I am sorry I asked the
2 question.

3 Turning back back to your cable operations, I
4 believe you stated that some of your cable rate increases were
5 limited to an index. What kind of index was used when was
6 it used? Was it the CPI or some other index?

7 A It was the CPI but it was not necessarily the
8 national CPI.

9 Q But the CPI.

10 A A CPI.

11 Q You also stated that in some cases rate increase
12 were denied because of FCC restrictions on signal carrying.

13 A Correct.

14 Q Assuming that the recent FCC decision to eliminate
15 those restrictions is upheld on appeal, do you expect that
16 the additional signals you will now be able to carry will en-
17 able you to obtain those rate increases?

18 MR. FELDSTEIN: Objection. That is speculative.
19 He is being asked to speculate on a situation he would have
20 no reason to know the answer to.

21 MR. ATTAWAY: Madam Chairman, if the witness testi-
22 fied he was not able to get a rate increase because of FCC
23 restrictions. If those restrictions no longer exist. Doesn't
24 it stand to reason he would expect to get a rate increase?
25 That is almost a truism, I believe.

etp27

1 CHAIRMAN BURG: I believe your witness, Mr.
2 Feldstein, is here as an expert in the industry. So, I
3 will overrule.

4 THE WITNESS: We would hope to get rate increases
5 in those systems and pay more copyright fees.

6 BY MR. ATTAWAY:

7 Q Do you hope to pay more copyright fees?

8 A No, sir. Well, we hope to pay more copyright
9 fees. Yes.

10 Q Mr. Addiss --

11 A That means our business is growing, isn't it?

12 Q You said that some increases are not granted
13 because it was determined that your return on net investment
14 was sufficient at the existing rate at that time.

15 In your opinion, were these determinations an
16 error? Was your net return on investment insufficient?

17 A In my opinion, yes.

18 Q Well, let me try to sum this up.

19 You are aware of the purpose of this testimony.
20 It relates to a provision in the statute which states that
21 the Tribunal may consider as an extenuating factor the
22 inhibiting effects of rate regulation. Is that your
23 understanding?

24 A Yes.

25 Q You have testified that on the average copyright

etp28

1 payments that you make as a percent of gross revenues is 1.5
2 percent. Was that gross basic revenues or gross revenues
3 including pay cable?

4 A It is gross basic revenue.

5 Q Excluding pay cable rates?

6 A That is correct.

7 Q If the Tribunal were to decide not to consider the
8 inhibiting effect, if any, of rate regulation in its decision
9 in this proceeding, how much additional copyright fees per
10 subscriber do you think that your systems would be paying
11 on average?

12 A I don't know.

13 Q Let's see if we can arrive at that figure using
14 some of the numbers that you have given in your testimony.
15 I believe that you said in October 1976, your average basic
16 subscriber rate was \$7.25?

17 A That is correct.

18 Q Your average basic subscriber rate as of April
19 1980 was \$8.04?

20 A Yes, that is correct.

21 Q I believe that is a difference of 10.9 percent.
22 Now the yard stick that we have urged upon the Tribunal in
23 this proceeding is the CPI which has increased approximately
24 40 percent during that period. So, if you had not had rate
25 regulation to contend with, you may have been able to increase

etp29 1 your rates up with the CPI which was approximately 40
2 percent; correct?

3 A No.

4 Q No?

5 A No.

6 Q How much do you think you would have increased
7 your rates, rate regulation aside?

8 A I don't know.

9 CHAIRMAN BURG: Mr. Addiss.

10 THE WITNESS: There are various other factors
11 involved.

12 CHAIRMAN BURG: In answer to a question I
13 asked, you thought they might have been increased 10 to 15
14 percent when I asked an additional line of questioning.

15 THE WITNESS: That was overall. I believe counsel
16 is asking on rate regulation only. There are other factors
17 involved franchise, renewals and rebuilds. So forth and
18 so on. I was taking him literally when he was talking about
19 rate regulation.

20 That is only one of our problems although it is
21 a major problem.

22 BY MR. ATTAWAY:

23 Q Let's assume that these other factors, factors
24 other than rate regulation, don't exist and rate regulation
25 is the only reason that you have not been able to increase

etp30

1 your rate at least 40 percent over October 1979. You said
2 that you have increased them 10.9 percent up to \$8.04. Had
3 you increased them 40 percent, they would have been \$10.15,
4 which is a difference of \$2.11.

5 You testified that on average your copyright fee
6 is 1.5 percent of gross revenues; correct?

7 A Yes.

8 Q So, assuming that rate regulation is the only
9 reason why you have not increased your rates to the full
10 extent of the CPI which would have been \$2.11 more than
11 you actually did, would not the copyright effect of that
12 different 1.5 percent amount to 3.1 cents per subscriber?

13 A I don't know, counselor. The problem is it is
14 not only rate regulation. I went through a series of nine
15 different categories which inhibited us from getting rate
16 increases. Rate regulation is certainly one. It is an
17 important one but there are eight others, I believe mentioned.

18 Q So, rate regulation is only one of several
19 factors that have affected your ability to increase your
20 rates; is that correct?

21 A Yes.

22 Q And you are unable to quantify that one factor rate
23 regulation; is that correct?

24 A That is correct.

25 MR. ATTAWAY: That is all the questions I have,

etp31

1 Madam Chairmn. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. FELDSTEIN:

4 Q I have one question for you, Mr. Addiss. Mr.
5 Attaway's last series of questions attempted to establish
6 that rate regulation was one of several categories of
7 difficulties.

8 Is it not true that many of the other nine
9 categories which you catalog for us are related to regulation?

10 A Yes.

11 COMMISSIONER GARCIA: I believe I said rate
12 regulation was a very important deterrent to getting rate
13 increases.

14 Can we repeat a couple of examples in addition
15 to pure rate regulations that are regulatorily related?

16 THE WITNESS: Yes. Franchise renewal. We have
17 a system in the Midwest, for instance, where we were faced with
18 a franchise renewal during this period of time. Indeed,
19 the town went out and requested new proposals. In the
20 proposals there was agreement not to raise the rates for
21 a period of time under the new franchise.

22 We won the franchise renewal. We agreed as part
23 of the new franchise not to raise the rates for a period of
24 time.

25 MR. FELDSTEIN: That concludes questioning.

ETP32

1 CHAIRMAN BURG: Let me ask one question, Mr. Addiss.
2 What is the average length of a franchise? When you go into
3 a new community and try to get that franchise, what are we
4 talking about in time?

5 THE WITNESS: It varies. The most common number
6 used is 15 years.

7 CHAIRMAN BURG: How much higher and lower does
8 that go, roughly?

9 THE WITNESS: We have franchises that last 15
10 years and we have franchises that go on in perpetuity.

11 CHAIRMAN BURG: I did not really intend to rush
12 you gentlemen. But if you are indeed finished I see no
13 reason why we should not adjourn.

14 What is the name of your witness for Monday,
15 Young or Goddard?

16 MR. FELDSTEIN: His name is Richard Young.

17 MR. ROSS: We are in the process of trying to get
18 in touch with Mr. Young. He is between two places in
19 Arizona.

20 CHAIRMAN BURG: Thank you, Mr. Addiss. Unless
21 we hear differently, we will be back here in Room 610 at
22 10 o'clock on Monday morning. Thank you and have a good
23 weekend.

24 (Whereupon, at 3:10 p.m., the proceedings were
25 adjourned to reconvened at 10 o'clock a.m.,
Monday, October 6, 1980.)